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Report of the open-ended intergovernmental working group on a draft United Nations declaration on the right to peace on its third session

Chairperson-Rapporteur: Christian Guillermet-Fernández

GE.15-10455 (E)



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I. Introduction

1. In its resolution 20/15, the Human Rights Council decided to establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace.

2. In its resolution 27/17, the Human Rights Council decided that the open-ended intergovernmental working group would hold its third session for five working days in 2015 with the objective of finalizing the declaration. The third session was held from 20 to 24 April 2015.

3. Also in its resolution 27/17, the Human Rights Council requested the Chairperson-Rapporteur of the working group to conduct informal consultations with Governments, regional groups and relevant stakeholders before the third session of the group. The Council also requested the Chairperson-Rapporteur to prepare a revised text on the basis of the discussions held during the first and second sessions of the working group and on the basis of the intersessional informal consultations to be held, and to present it prior to the third session of the working group for consideration and further discussion thereat. The revised text prepared by the Chairperson-Rapporteur was circulated to all States by note verbale on 31 March 2015.

4. On 20 April 2015, the session was opened by the Officer-in-Charge of the Human Rights Council Mechanisms Division of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on behalf of the High Commissioner. The Officer-in-Charge recalled that the realization of peace lay at the very heart of the principles and purposes of the United Nations, as reflected in its Charter. He referred to the 2005 World Summit Outcome,¹ and the Human Rights up Front initiative, launched by the Secretary-General in 2013, in which the complementarity between peace and human rights was clearly reflected. The Officer-in-Charge commended the efforts of the Chairperson-Rapporteur to engage actively with States, civil society and academia in order to reconcile the diverse views and positions with regard to the right to peace and to move the process forward. He also confirmed the continued readiness of OHCHR to assist the working group in all its endeavours.

II. Organization of the session

A. Election of the Chairperson-Rapporteur

5. At its first meeting, on 20 April 2015, the working group re-elected Christian Guillermet-Fernández (Costa Rica) as its Chairperson-Rapporteur, by acclamation. He had been nominated by Guatemala on behalf of the Group of Latin American and Caribbean States.

B. Attendance

6. Representatives of the following States Members of the United Nations attended the meetings of the working group: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Brazil, Brunei Darussalam, Canada,

¹ General Assembly resolution 60/1.

Chile, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Egypt, Estonia, Ethiopia, France, Gabon, Georgia, Greece, Guatemala, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Japan, Kazakhstan, Kuwait, Lao People's Democratic Republic, Latvia, Libya, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Morocco, Myanmar, Namibia, Nepal, Netherlands, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Republic of Korea, Russian Federation, San Marino, Saudi Arabia, Senegal, Singapore, South Africa, South Sudan, Spain, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, Togo, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Zambia.

7. The Holy See and the State of Palestine were, as non-Member States, represented by observers.

8. The United Nations Educational, Scientific and Cultural Organization was represented by an observer.

9. The following intergovernmental organizations were represented by observers: Council of Europe, European Union, League of Arab States, Organization of Islamic Cooperation.

10. The following non-governmental organizations in consultative status with the Economic and Social Council were represented: African Commission of Health and Human Rights Promoters (CAPSDN), Al-Hakim Foundation, American Association of Jurists, Americans for Democracy and Human Rights in Bahrain, Inc., Associazione Comunità Papa Giovanni XXIII, Brahma Kumaris World Spiritual University, Center for Global Nonkilling, Congregation of Our Lady of Charity of the Good Shepherd, Foundation for GAIA, Geneva for Human Rights – Global Training, Indian Council of South America (CISA), Institute for Planetary Synthesis, Institute of Global Education, International Association of Democratic Lawyers, International Council of Voluntary Agencies, International Fellowship of Reconciliation, International Institute of Mary Our Help of the Salesians of Don Bosco, International Movement against All Forms of Discrimination and Racism (IMADR), International Volunteerism Organization for Women, Education and Development – VIDES, Japan Federation of Bar Associations, Japanese Workers' Committee for Human Rights, Peace Boat, Planetary Association for Clean Energy, Inc., Rencontre africaine pour la défense des droits de l'homme, Spanish Society for International Human Rights Law, United Network of Young Peacebuilders (UNOY Peacebuilders), Women's International League for Peace and Freedom (WILPF).

11. The Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, also participated in the session.

C. Meetings and documentation

12. The working group held eight fully serviced meetings during its third session.

13. The working group also held informal consultations on 22, 23 and 24 April 2015.

14. The working group had before it the following documents:

Revised text by the Chairperson-Rapporteur presented to the working group in accordance with Human Rights Council resolution 27/17

References used for the revised text by the Chairperson-

	Rapporteur
A/HRC/WG.13/3/1	Note by the Secretariat
A/HRC/27/63	Report of the open-ended intergovernmental working group on a draft United Nations declaration on the right to peace

D. Adoption of the agenda and organization of work

15. In his opening statement, the Chairperson-Rapporteur referred to Human Rights Council resolution 27/17, in which the Council requested him to prepare a new text on the basis of the discussions held during the first and second sessions of the working group and on the basis of the intersessional informal consultations.

16. The Chairperson-Rapporteur introduced his new text, which he described as the result of extensive consultations held with a wide range of stakeholders, including States, intergovernmental organizations, United Nations entities, civil society organizations and academia.² In this light, the revised text did not include any paragraph or provision that had not been previously discussed with or in the working group. The revised text was short and concise, and did not aim to provide a stand-alone definition of the right to peace as such, but rather focused on the elements composing the right to peace that had already been identified by the Human Rights Council in previous years.

17. The Chairperson-Rapporteur stated that the first and second sessions of the working group had created a basis that would allow for the working group to conduct the negotiation process in good faith. As this was the final session of working group, it was now the responsibility of States to reach consensus on a draft declaration. He reiterated that transparency, inclusiveness, consensus and objectivity – and a little realism – continued to be the guiding principles for the conduct of the process.

18. At its 1st meeting, on 20 April 2015, the working group adopted, without comments, its agenda (see A/HRC/WG.13/3/1), and the draft programme of work.

19. On the proposal of the Chairperson-Rapporteur, the working group agreed to hold a general debate, to be followed by the first and second readings of the revised text prepared by the Chairperson-Rapporteur, and to conclude with the adoption of the report on the session.

III. General comments

20. At the 1st meeting, on 20 April 2015, following the adoption of the agenda, the floor was opened for general comments, which included statements delivered on behalf of groups of States, namely, by Algeria (on behalf of the Group of African States), the Islamic Republic of Iran (on behalf of the Non-Aligned Movement), the European Union and the Organization of Islamic Cooperation.

² The Chairperson-Rapporteur convened several informal consultations in preparation for the third session of the working group. The first consultation was held with States and other stakeholders on 30 January 2015, the second consultation with representatives of various international organizations on 26 February 2015, and the third consultation with non-governmental organizations, also on 26 February 2015. Consultations and bilateral meetings were held also with the Association of Southeast Asian Nations, the Organization of Islamic Cooperation, the European Union and regional groups prior to the third session of the working group.

21. Although views concerning the concept of the right to peace still diverged, all participating delegations demonstrated their will to engage constructively in the discussion. The general debate was concluded during the first part of the 2nd meeting.

22. The delegations congratulated the Chairperson-Rapporteur on his re-election and commended him for his able leadership on the issue and for his approach based on transparency, inclusiveness, consensual decision-making and objectivity, which had contributed to narrowing the gap between diverging opinions among delegations on the initial draft declaration. Numerous delegations also expressed their appreciation for his efforts to prepare a revised text that carefully reflected the different positions expressed at the second session of the working group and during the constructive intersessional consultations with delegations, regional groups and other stakeholders. The delegations expressed the hope that the consensus approach would be maintained and also that the third session would conclude with a positive outcome so that the working group would be in a position to submit a draft declaration to the Human Rights Council.

23. A number of delegations reiterated their support for the mandate of the working group, namely to progressively negotiate a draft United Nations declaration on the right to peace. They considered that the working group needed to be mindful of fulfilling its mandate as provided by the Human Rights Council, and encouraged all parties to engage with that goal in mind.

24. Many delegations considered that the right to peace and the realization of peace were fundamental for economic and social progress and for the enjoyment of all human rights. A peaceful environment was necessary for the achievement of individual and collective rights in every nation. In their view, the right to peace was not a new concept, but one that already existed in the normative legal framework of international law. The prohibition of acts of aggression as contained in the Charter of the United Nations was the basis for the right to peace. Regional instruments that reflect the right to peace were recalled, for example, the African Charter on Human and Peoples' Rights and the Human Rights Declaration of the Association of Southeast Asian Nations (ASEAN). The imposition of unilateral coercive measures violated the principles of the Charter of the United Nations and therefore the right of peoples to live in peace. Several delegations stated that the right to peace could be realized by respecting the self-determination of peoples and the sovereignty, territorial integrity and political independence of sovereign States.

25. Other delegations restated their conviction that there was no legal basis for the right to peace as either an individual or collective right in international law. They were therefore of the view that it was not appropriate for the draft declaration to imply the existence of such a right in the title or the body of the text. They nevertheless welcomed the direction in which the Chairperson-Rapporteur was guiding the work of the working group. The delegations appreciated, however, the mutually reinforcing relationship between peace and security, human rights and development. While acknowledging the difficult task ahead for the working group, they expressed their will to engage constructively in forthcoming negotiations.

26. The revised text prepared by the Chairperson-Rapporteur was largely regarded as a solid basis for the negotiations to be held during the third session. According to the delegations, the text had to be concise but balanced, meaningful, realistic and implementable. It was suggested that controversial or undefined issues not enjoying consensus at the international level not be included. The content should be guided by international law and the provisions of the Charter of the United Nations. The inclusion of such elements as the prevention of armed conflict, a culture of peace and the interlinkage and mutual reinforcement between the three pillars of peace and security, development and human rights was welcomed by some. A number of delegations supported references in the

preamble to the right to development, the Declaration on the Right of Peoples to Peace³ and the issue of terrorism.

27. Some delegations regretted that no progress had been made in the revised text towards norm-setting and codifying the right to peace pursuant to Human Rights Council resolution 20/15, reflecting previous related developments at the United Nations, including the Declaration on the Right of Peoples to Peace. Furthermore, they believed that certain areas of the text needed strengthening. In this connection, a suggestion was made to highlight the interrelations between the non-proliferation of weapons of mass destruction and peacemaking, peacekeeping and peacebuilding and the realization of the right to peace. Attention was also drawn to the situation of people living under foreign occupation, which violated all human rights.

28. Several delegations considered it essential to include the principles of non-aggression and the prohibition of the use of force in the draft declaration, while one delegation stressed the need to recognize the exceptions of the latter enshrined in the Charter.

29. The representatives of non-governmental organizations and of other stakeholders that contributed to the general discussion appealed to States to show political will and to work constructively towards producing a meaningful draft declaration, in spite of their differences. Their appreciation was expressed to the Chairperson-Rapporteur for engaging with numerous stakeholders when preparing his revised text and for having included references to such issues as equality and discrimination, as well as the rule of law. The reference to the three pillars of the United Nations in the preamble was also welcomed, as was the notion that peace was more than just the absence of conflict. A view was expressed that the draft declaration previously prepared by the Advisory Committee was more in line with the aspirations of peoples. While appreciating the efforts of the Chairperson-Rapporteur, some felt that his revised draft did not meet their expectations to build significantly on previous instruments, such as the Declaration on the Preparation of Societies for Life in Peace⁴ and the Declaration on the Right of Peoples to Peace.⁵ They regretted that the working group had not yet made progress in codifying the right to peace pursuant to Human Rights Council resolution 20/15, and that an explicit article defining the right to peace was absent from the revised text. They called upon the working group to initiate a genuine negotiation on the right to peace leading to normative development rather than to a political declaration.

30. Suggestions were also made for the inclusion of such elements as the right to human security; the right to disarmament; the right to peace education and training; the right to conscientious objection to military service; and the right to resistance and opposition to oppression. A call was also made for the establishment of a monitoring body to guarantee the implementation of the declaration. Some representatives proposed including the notions of the right to live in peace and of gender equality. One stakeholder drew attention to the adverse human rights impact of military spending, and expressed hope that the future declaration would be a step towards disarmament.

³ General Assembly resolution 39/11, annex.

⁴ General Assembly resolution 33/73.

⁵ General Assembly resolution 39/11, annex.

IV. First and second readings of the revised text prepared by the Chairperson-Rapporteur of the working group

31. At its 2nd meeting, on 20 April 2015, its 3rd and 4th meetings, on 21 April 2015, and its 5th and 6th meeting on 22 April 2015, the working group proceeded, paragraph by paragraph, with the first and second readings of the revised text prepared by the Chairperson-Rapporteur of the working group, on the understanding that nothing would be agreed upon until everything had been agreed upon. The text was subject to two readings during the session, with the exception of article 1, which was considered only during the first reading.

32. At the outset, the Chairperson-Rapporteur stated that the revised text encompassed the different views expressed at the second session of the working group and in the informal and bilateral consultations held during the intersessional period. He explained that the revised text incorporated those elements included in the compilation of proposals made by States during the second session of the working group, around which it was hoped that consensus could be reached. He stressed that, in the light of the foregoing, the revised text was not the "Chairperson's text", and that his role was merely to facilitate the process. The Chairperson-Rapporteur reiterated his determination to seek consensus on the draft declaration, which he viewed as a first step towards building and codifying the right to peace.

33. Before beginning the reading, the Chairperson-Rapporteur also outlined the structure of the revised text. The first part of the preamble contained references to international instruments relevant to the context of the right to peace, followed by a number of paragraphs relating to each of the three pillars of the United Nations (namely, peace and security, human rights, and development), a section on peace education and the culture of peace, and concluded with the purposes of the declaration. Four articles formed the core of the revised text, building on, *inter alia*, article 23 of the African Charter on Human and Peoples' Rights and article 38 of the ASEAN Human Rights Declaration. Articles 3 and 4 dealt with the implementation and interpretation of the draft declaration.

A. Preamble

34. In the course of the reading, a number of proposals were made by delegations and other stakeholders to modify the Chairperson's revised text. The proposals were recorded in successive compilations subsequently made available in the room.

35. Comments of a general nature were made in which some States again reaffirmed their full support for the mandate of the working group and to reflect clearly the concept of the right to peace in the draft declaration, while others restated their view that there was no consensus on the right to peace as such, and that they wished to focus rather on the interlinkage between the three pillars of the United Nations. Those making statements pledged, in the spirit of reaching compromise, to work towards consensus, to show flexibility and to refrain from introducing controversial or complex issues.

36. Some delegations made proposals to insert specific provisions from the Charter of the United Nations throughout the preamble, while others raised a general concern over selectively adding elements from agreed texts, and notably from the Charter. The latter delegations were of the view that a general reference to the Charter at the beginning of the preamble was sufficient and all-encompassing, and that there was no need to add further extracts from it in subsequent sections of the preamble.

37. Discussions also centred on the inclusion of a reference to foreign occupation and alien subjugation, domination and exploitation, and a specific mention of the Declaration on the Granting of Independence to Colonial Countries and Peoples.⁶ Some participants felt that the absence of such references in a draft declaration on the right to peace was inconceivable.

38. It was also proposed to include a reference to the 2005 World Summit Outcome⁷ and the post-2015 development agenda. Some delegations were of the view that the declaration should be kept short and concise, and generally did not favour additional inclusions, although they agreed with the reference to the World Summit Outcome and the post-2015 development agenda. Regarding the proposal to also add a general reference to "the relevant instruments mentioning or in relation to peace or the right to peace", a preference was voiced for citing specific instruments rather than referring to instruments in a general manner.

39. A suggestion to include a reference to the Rome Statute of the International Criminal Court, as amended, was also debated, with several delegations raising concerns over the fact that the amendments regarding the crime of aggression (2010) had not yet come into force. Alternatively, a reference to aggression or acts of aggression was proposed.

40. The insertion in the revised text of a paragraph on the issue of terrorism as a threat to peace was welcomed by a number of delegations. It was suggested that explicit mention be made to the threat that it posed to the territorial integrity and security of States in line with the wording of the Declaration on Measures to Eliminate International Terrorism.⁸ It was also felt that the unequivocal condemnation of all acts of terrorism, including the provision of support for terrorist groups, as criminal and unjustifiable needed to be emphasized. A reservation was expressed at the proposal to condemn also the payment of ransom in this connection.

41. Alternatively, it was proposed that more focus should be placed on the measures used in the fight against terrorism and that the need for them to be in compliance with the obligations of States under international law be stressed. Some delegations felt that the recognition of the importance of moderation and tolerance as a value within societies for countering extremism in all its aspects should also be reflected in the text.

42. As a compromise and a means to avoid focusing disproportionately on the issue of terrorism in the draft declaration, a suggestion was made to merge the original text with the proposals made. In this connection, caution was expressed at merging the issues of terrorism and extremism, given that extremism was a different and broader concept.

43. Several delegations felt that it was important to reaffirm the duty of States to cooperate, in accordance with the Charter of the United Nations, in order to, *inter alia*, maintain international peace and security. It was therefore suggested that wording from the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations⁹ be included. There was broad support for the proposal, although a concern was expressed that such a reference would be too broad.

44. Recognizing that peace was not only the absence of conflict, requirements for it were discussed. In this regard, some delegations were of the view that the link between

⁶ General Assembly resolution 1514 (XV).

⁷ General Assembly resolution 60/1.

⁸ General Assembly resolution 49/60, annex.

⁹ General Assembly resolution 2625 (XXV), annex.

peace and the full enjoyment of all human rights and fundamental freedoms should be more explicit. Others wished to emphasize the importance of socioeconomic development.

45. Diverging views were expressed on the inclusion of references to the right to development and the recalling of the Declaration on the Right to Development. While some delegations proposed the inclusion of additional references throughout the preamble, others supported the deletion of all mention. Some delegations pointed out that too many additional inclusions on this topic would dilute the revised text, arguing that the text would be better structured if these references were omitted in parts of the text that did not specifically focus on the right to development and related topics.

46. With regard to the provision in the revised text reflecting article 5 of the Vienna Declaration and Programme of Action, it was proposed that the language in the article should be more accurately reflected, and also that a reference to the primary responsibility of States to promote and protect human rights be added.

47. Comments were also made on a paragraph based on article 5 of General Assembly resolution 60/251 on the contribution of the United Nations to the prevention of human rights violations. Some preferred reverting to the original language by replacing the reference to the United Nations with a reference to the Human Rights Council.

48. Several delegations expressed the desire to insert specific wording from the Declaration on the Preparation of Societies for Life in Peace, emphasizing the duty of States to discourage advocacy of hatred and prejudice. Some delegations felt that the proposed text was not clearly relevant to the notion of the right to peace. Others were unable to support the insertion also because the relationship between the two concepts was a very complex one and touched upon the freedom of expression.

49. Suggestions were made to insert wording that would emphasize the importance of strengthening multilateralism, or the capacity of the United Nations, in order to prevent armed conflict. Such an insertion was agreeable to most delegations, although reservations were made on an additional proposal relating to the consequences of armed conflict and the positive impact that multilateralism could have on alleviating the suffering of people affected by armed conflict.

50. Several delegations subsequently proposed text that reflected the importance of promoting actions to eliminate the root causes of conflict. During the ensuing discussion, delegations expressed diverging positions on the exact phrasing of the text. Some delegations found ambitious wording preferable, while others were of the view that a more moderate approach was desirable.

51. It was also proposed to include language based on article 10 of the Programme of Action on a Culture of Peace on development assistance and capacity-building in post-conflict situations. While some delegations found the proposed text overly specific, there was in this regard broader support for further proposals that underlined the activities of the United Nations in development assistance. Several ideas on merging the different proposals were subsequently put forward.

52. Wording was further proposed to emphasize that a culture of peace is enhanced when States respect their obligations to settle international disputes by peaceful means. The idea advanced to list also some of the acts that would be inconsistent with this obligation, such as the delivery of shipments of arms to any party of an armed conflict, was not generally supported. Also discussed was the importance of resource allocation to programmes to enhance a culture of peace. There was also a proposal for alternative language on the issue of a culture of peace based on articles 3 and 4 of the Declaration on a Culture of Peace, and an addition to stress the importance of promoting and implementing

the World Programme for Human Rights Education¹⁰ or the United Nations Declaration on Human Rights Education and Training¹¹ in order to develop a culture of peace.

53. Support was expressed for the proposal of several delegations to include wording from the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities¹² and the Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.¹³ Some were of the view that the inclusion of language from the Durban Declaration and Programme of Action would emphasize that racism, racial discrimination, xenophobia and related intolerance may, *inter alia*, endanger international peace and security.

54. A proposal was made to include wording on the elimination of nuclear weapons and other weapons of mass destruction as a means to contribute positively to the pursuit of durable and sustainable world peace.

55. Representatives of non-governmental organizations, speaking during the first reading, endorsed the preamble to the draft declaration, stressed the importance of reaching consensus and urged States to engage constructively in the debates with a view to finalizing and adopting the text at the end of the session. They stated that peace was not just the absence of violence, and generally welcomed proposals made by States that aimed to define the notion of the right to peace broadly and positively. They added that a clear reference to the right to peace should be included in the text.

56. In order to emphasize the importance of the draft declaration, it was also suggested that a separate paragraph referencing exclusively the Universal Declaration of Human Rights be included in the text. Another suggestion was made that more references to international, regional and local human rights instruments be included throughout the preamble.

B. Article 1

57. Before proceeding to consideration of article 1 of the revised text, the Chairperson-Rapporteur explained that the article was grounded in the three pillars of the United Nations. It followed that everyone should be entitled to enjoy peace and security, human rights and development. In this case, entitlement was used to refer to the guarantee of access of every human being to the benefits derived from the three pillars, which ought to be interpreted as an aspiration, an obligation or a privilege to which every human being should have access for the full enjoyment of a life in dignity and without war, violence, intolerance or conflict.

58. The Chairperson-Rapporteur clarified that the revised text drew on, *inter alia*, elements that the Human Rights Council had regarded as fundamental for building the right to peace. In particular, he had taken into consideration the elements that the Council had included in the operative paragraphs of resolutions 14/3 (2010), 17/16 (2011) and 20/15 (2012) on the right of peoples to peace. He had also taken into account the diverse positions expressed, and recalled that delegations today bore responsibility for finding agreements and for adopting a declaration.

59. Several delegations stated that, given the mandate of working group, an explicit reference to the right to peace was necessary, while others opposed such a reference.

¹⁰ See General Assembly resolution 59/113.

¹¹ General Assembly resolution 66/137.

¹² General Assembly resolution 47/135, annex.

¹³ See A/CONF.189/12.

reiterating that they did not recognize that right as a stand-alone right under international law, even though they agreed that peace was an important goal for humanity. In that sense, they restated their support for the balanced approach taken by the Chairperson-Rapporteur. It was also suggested that the mutually reinforcing nature of peace, security, development and human rights should have been underlined.

60. A number of alternative proposals for article 1 were made by delegations in an effort to find consensus. It was suggested that attention be focused on the promotion, protection and respect of human rights and fundamental freedoms, including peace, security and development. Another suggestion was to refer to the right to peace, to enjoy security and development, allowing the full realization of all human rights, as an entitlement for everyone. An alternative proposal was to acknowledge that, in some States, the elements contained in article 1 could be characterized as a right to peace. Another option put forward was to recognize the right of everyone to enjoy peace in such a way that security is maintained, all human rights are promoted and protected, and development is fully realized.

61. The language proposed by some delegations at the previous session of the working group was also re-tabled, referring to the fact that individuals, groups and peoples have the inalienable right to a just, sustainable and lasting peace, or mentioning the inalienable right of everyone to live in peace and dignity. During the discussion, some delegations restated their positions, but also expressed their readiness to accept the revised text as a compromise. Clarification was sought with regard to the legal difference between an entitlement and a right. The Chairperson-Rapporteur explained that the notion of entitlement was used in the International Covenant on Economic, Social and Cultural Rights to denote rights that were to be progressively realized. One delegation expressed a preference for not referring to an entitlement, but rather to the ability to enjoy peace, security, human rights and development.

62. Proposals to include additional articles in the revised text were made and supported by several delegations. The first proposal referred to the respect and implementation of the principles and purposes of the Charter of the United Nations, while the second one focused on the obligation of all States to refrain from the threat or use of force. It was also suggested that the latter proposal include a mention of respect for the territorial integrity or political independence of other States.

63. Participating non-governmental organizations, which were given an opportunity to making statements during the first reading, favoured the inclusion of some notions relating to everyone's right to live in peace, recalling that the right to life is recognized by international human rights law. Some suggested that the reference to "security" be removed from the revised text, cautioning on the potential ambiguity of the term – which could refer to either human security or national security, and therefore be a limitation to a recognized right – and reiterating that the declaration was not about the three pillars of the United Nations.

C. Article 2

64. The Chairperson-Rapporteur pointed out that article 2 focused on the role that States had to play to promote and protect justice and the rule of law, and to guarantee freedom from fear and want, all elements that contributed to peacebuilding. He added that the article was grounded in the key notion of human dignity.

65. Support was expressed for the draft article and for its action-oriented language. Several delegations by contrast sought to reinforce the declarative nature of the text.

66. Several delegations proposed adding specific language that referred to such notions as friendship and cooperation, the security of citizens, social justice and democracy, and moderation and tolerance. An alternative text for article 1 was also proposed, reflecting the fact that peace resulted from a systematic process, and drawing on language from the Vienna Declaration and Programme of Action.

67. Extensive discussions were held on new proposals to include elements relating to the creation and promotion of peace zones as a means to ensure the enjoyment of the right to peace; the development of peace education programmes; and the removal of obstacles to peace, such as unilateral coercive measures. A number of delegations felt that the concept of peace zones was insufficiently defined to be included in a United Nations declaration, and they also objected to the reference to the right to peace in the proposed article. Reference to peace education programmes received support from several delegations, while others considered the wording to be too prescriptive. Suggestions were made to either move the reference to the preamble or to list it as an example of possible actions by States in implementing the declaration in article 3. The suggestion to add comprehensive history education based on truth was also considered.

68. Participating non-governmental organizations, which were given an opportunity to make statements during the first reading of the revised text, pointed out the relevance of the afore-mentioned proposals, and one organization stated that States should be encouraged to report on how they contributed to the process towards establishing peace.

D. Article 3

69. Before opening the discussion on article 3, the Chairperson-Rapporteur explained that the article referred to the actors responsible for implementing the declaration and for providing assistance.

70. Some felt that the article should principally be directed to the United Nations and its specialized agencies, which should be encouraged to work together to achieve the goals of the declaration, and not include a list of other actors. Some delegations also expressed a preference for having a short and concise text, and provided concrete language to streamline the wording. Others supported the explicit inclusion of civil society. It was also suggested that States be included among the actors.

71. Participating non-governmental organizations, which were given an opportunity to comment during the first reading of the revised text, stressed the importance of including all actors in the promotion of peace.

E. Article 4

72. A number of delegations expressed concern at the list of instruments mentioned in article 4 of the revised text as a reference to guarantee a human rights approach to the declaration. Some felt that it brought legally binding texts and soft law to the same level, while others pointed out that the ratification status of the various instruments under the legal system of each State should not interfere with the interpretation of the text of the declaration. Some delegations proposed the deletion of the reference to regional instruments, while others preferred to maintain it. New language was suggested as a way to reduce the complexity of the article and to clarify its legal implication for States. Some delegations provided amendments to streamline the wording of the article.

V. General comments by non-governmental organizations

73. At the 7th meeting, on 23 April 2015, non-governmental organizations presented joint statements in which they called for the right to peace to be reaffirmed as a fundamental human right and reiterated that the right to peace was solidly based on international human rights law. They called upon delegations to adhere to their task of drafting a declaration on the right to peace on the basis of consensus.

74. Participating non-governmental organizations welcomed the efforts made by delegations to include peace education, and further reiterated previous proposals made to include elements in the draft declaration on disarmament and on the prohibition of the use of force. It was hoped that a meaningful declaration could be adopted, which would constitute a starting point to materialize the right to peace.

VI. Conclusion of the session

75. At its 8th meeting, on 24 April 2015, the working group reconvened in a formal setting to conclude its work.

76. At the request of delegations, the Chairperson-Rapporteur presented a revised text of a draft declaration (see annex), based on the discussions held at the third session of the working group, which was discussed in an informal setting.

77. One delegation felt that the right to development was insufficiently reflected in the Chairperson's text. Some delegations also pointed that the following proposals, which they had put forward, had not been discussed or integrated into the text:

- "Convinced that the elimination of nuclear weapons and other weapons of mass destruction, including through the establishment of weapons of mass-destruction-free zones, contribute positively to the pursuit of durable and sustainable world peace"
- "States should respect and put into practice the principles and purposes of the Charter of the United Nations in their relations with all other States irrespective of their political, economic or social systems or their size, geographical location or level of economic development"
- "Affirming that a world free from weapons of mass destruction would greatly contribute to the realization of the purposes and principles of the Charter of the United Nations"

78. The Chairperson-Rapporteur explained that he intended to include his conclusions and recommendations in the report on the status of negotiations on a draft declaration as of the conclusion of the third session of the working group. He added that he was not in a position to make any commitment to continuing the present mandate in the future.

79. In the general comments made at the conclusion of the session, a number of delegations expressed their sincere gratitude for the leadership, flexibility and efforts demonstrated by the Chairperson-Rapporteur in working with all parties towards consensus. Appreciation was also expressed for the contributions made by non-governmental organizations and the support provided to the Chairperson-Rapporteur and the working group by the secretariat throughout the third session. While some disappointment was expressed with the outcome of the working group, it was nevertheless felt that progress had been made. Several delegations and non-governmental organizations taking the floor expressed the hope that work would continue and an agreement would be reached in the near future.

VII. Conclusions and recommendations of the Chairperson-Rapporteur

80. The Chairperson-Rapporteur acknowledged the respectful atmosphere and spirit of dialogue and cooperation seen during the third session of the working group while moving towards a consensual outcome.

81. The Chairperson-Rapporteur pointed out that, unfortunately, such an agreement could not be reached and, for that reason, recommended that the Human Rights Council conduct an assessment of whether the international community was in a position to develop further the right to peace in a consensual manner at this point in time.

VIII. Adoption of the report

82. At its 8th meeting, on 24 April 2015, the working group adopted the draft report on its third session ad referendum and decided to entrust the Chairperson-Rapporteur with its finalization.

Annex

Text presented by the Chairperson-Rapporteur on 24 April 2015

United Nations declaration on the right to peace^{*}

Preamble

The General Assembly,

- PP1 *Guided* by the purposes and principles of the Charter of the United Nations,
- PP2 *Recalling* the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Vienna Declaration and Programme of Action,
- PP3 *Recalling also* the Declaration on the Right to Development, the United Nations Millennium Declaration, including the Millennium Development Goals, and the 2005 World Summit Outcome,
- PP4 *Recalling further* the Declaration on the Preparation of Societies for Life in Peace, the Declaration on the Right of Peoples to Peace and the Declaration and Programme of Action on a Culture of Peace, and other international instruments relevant to the subject of the present declaration,
- PP5 *Recalling* the Declaration on the Granting of Independence to Colonial Countries and Peoples,
- [PP6 *Recalling* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,]^{**}
- PP7 *Reaffirming* the obligations of all Member States, as enshrined in the Charter of the United Nations, to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered,
- [PP8 *Reaffirming* that the full realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination, as enshrined in the Charter and embodied in the International Covenants on Human Rights, as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples, is integrally linked to the fuller development of a culture of peace,]
- PP9 *Recognizing* the importance of the settlement of disputes or conflicts through peaceful means,
- [PP10 *Deeply deploring* all acts of terrorism, recalling that the Declaration on Measures to Eliminate International Terrorism recognizes that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations and may pose a threat to international peace and security, jeopardize friendly relations among States, threaten the territorial integrity and security of States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society, and solemnly reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism [including providing support for terrorist groups, such as financial

^{*} The title of the the text presented by the Chairperson-Rapporteur was not discussed at the third session of the working group.

^{**} Square brackets denote text on which consensus was not reached.

support and safe havens for those who incite, plan, finance or commit terrorist acts as criminal and unjustifiable], wherever and by whomever committed,]

- [PP11] *Stressing* that all measures taken in the fight against terrorism must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law, as well as those enshrined in the Charter.]
- PP12 *Reaffirming* the determination of the peoples of the United Nations as expressed in the Preamble to the Charter to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, to promote social progress and better standards of life in larger freedom, and to practice tolerance and live together in peace with one another as good neighbours.
- PP13 *Recalling* that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing.
- [PP14] *Recognizing* that peace is not only the absence of conflict, but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation.]
- PP15 *Recalling also* that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and recognizing that peace [is critically enhanced for] the full enjoyment of all inalienable rights derived from the inherent dignity of all human beings.
- PP16 *Recalling further* that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized.
- PP17 *Recalling* the commitment of the international community to eradicate poverty and to promote sustained economic growth, sustainable development and global prosperity for all and the need to address inequalities within and among States.
- PP18 *Recognizing* the importance of the prevention of armed conflict [, notably/including] through [multilateralism and diplomacy], in accordance with the purposes and principles of the Charter, and of the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world, bearing in mind the human and material costs of armed conflicts.
- PP19 *Recalling* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.
- PP20 *Reaffirming* the conviction expressed in the Constitution of the United Nations Educational, Scientific and Cultural Organization that, since wars begin in the minds of human beings, it is in the minds of human beings that the defences of peace must be constructed.
- [PP21] *Recalling* that every State has the duty to address advocacy of hatred and prejudice against other peoples as contrary to the principles of peaceful coexistence and friendly cooperation.]
- PP22 *Recalling* the importance of promoting actions aimed at [eliminating the root causes] the contributing factors of conflict, while taking into consideration, inter alia, political, social and economic factors.
- [PP23] *Recalling* that development assistance and capacity-building based on the principle of national ownership in post-conflict situations should restore peace through rehabilitation, reintegration and reconciliation processes involving all those engaged, and recognizing the importance of peacemaking, peacekeeping and peacebuilding activities of the United Nations for the global pursuit of peace and security.]

- PP24 [*Recalling* also that the wide diffusion of culture], and the education of humanity for justice and liberty and peace are indispensable to the dignity of human beings and constitute a [sacred] duty that all nations must fulfil in a spirit of mutual assistance and concern.
- PP25 *Reaffirming* that the culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life, as identified in the Declaration on a Culture of Peace, and that all this should be fostered by an enabling national and international environment conducive to peace,
- PP26 *Recognizing* the importance of moderation and tolerance as values contributing to the promotion of peace and security,
- PP27 *Recognizing also* the important contribution that civil society organizations can make in building and preserving peace, as well as in strengthening a culture of peace,
- PP28 *Stressing* the need for States, the United Nations system and other relevant international organizations to allocate [substantial] resources to programmes aimed at strengthening the culture of peace and upholding human rights awareness through training, teaching and education,
- PP29 *Stressing also* the importance of the contribution of the United Nations Declaration on Human Rights Education and Training to the promotion of a culture of peace,
- PP30 *Recalling* that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding, are among the best guarantees of international peace and security,
- PP31 *Recalling also* that tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human, as well as the virtue that makes peace possible and contributes to the promotion of a culture of peace,
- PP32 *Recalling further* that [every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace],
- PP33 *Recalling further* that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States,
- [PP34 *Recalling* the primary responsibility of States to promote measures to eliminate all forms of racism, racial discrimination, xenophobia and related intolerance, as well as all forms of intolerance and discrimination based on religion or belief,]
- [PP35 *Recognizing* that racism, racial discrimination, xenophobia and related intolerance are among the root causes of armed conflict and very often one of its consequences, and recalling that non-discrimination is a fundamental principle of international law,]
- PP36 *Inviting* solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace. [; to that end, present generations should ensure that both they and future generations learn to live together in peace] with the highest aspiration of sparing future generations the scourge of war,

Article 1^{***}

Everyone has the right to enjoy peace such that security is maintained, all human rights are promoted and protected and development is fully realized.

Article 2

States should respect, implement and promote equality and non-discrimination, justice and the rule of law and guarantee the security of their people, fulfil their needs and ensure the protection and promotion of their universally recognized human rights and fundamental freedoms as a means to build peace.

Article 3

States, the United Nations and specialized agencies should take appropriate sustainable measures to implement the present Declaration. Encourages international, regional, national and local organizations and civil society to support and assist in the implementation of the present Declaration.

Article 4

Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations. The provisions included in this Declaration are to be interpreted in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and international law.

^{***} The articles of the text presented by the Chairperson-Rapporteur were not discussed at the third session of the working group.

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Agenda item 9

Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere***Summary*

Racial and ethnic profiling, defined as a reliance by law enforcement, security and border control personnel on race, colour, descent or national or ethnic origin as a basis for subjecting persons to detailed searches, identity checks and investigations, or for determining whether an individual is engaged in criminal activity, has been a persistent and pervasive issue in law enforcement, and its use has often arisen in connection with policies on national security and immigration. Racial and ethnic profiling often exacerbates discrimination already suffered as a result of ethnic origin or minority status and remains a serious challenge to realization of the rights of various racial, ethnic and religious groups across the world.

In the present report, the Special Rapporteur examines the contexts that have led to the use of racial and ethnic profiling and provides an overview of the different manifestations by law enforcement agencies of the phenomenon. He discusses the legal, policy and regulatory frameworks prohibiting racial and ethnic profiling, and the policies and laws adopted at the international, regional and national levels, and then presents different examples of good practices that have been initiated to counter and eliminate the use of racial and ethnic profiling.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 25/32. It builds upon a report of the previous mandate holder (A/HRC/15/53), in which the then Special Rapporteur discussed, among other issues, the question of racial profiling by law enforcement agencies, and expressed concern about individuals from minority groups or migrant backgrounds regularly being subjected to stops and searches, interrogations and arrests by police and immigration officials, in a discriminatory manner, on the basis of their perceived ethnic or religious affiliation. It also builds upon reports on country visits (A/HRC/20/33/Add.1 and A/HRC/23/56/Add.2), and takes into account recent developments and information gathered, notably through an expert meeting and additional research on the phenomenon.

2. Racial and ethnic profiling is commonly understood to mean a reliance by law enforcement, security and border control personnel on race, colour, descent or national or ethnic origin as a basis for subjecting persons to detailed searches, identity checks and investigations, or for determining whether an individual is engaged in criminal activity. Racial and ethnic profiling has been a persistent and pervasive issue in law enforcement, and its use has often arisen in connection with policies on national security and immigration. Police, immigration and detention officials often target various ethnic, religious or racial groups. Since 11 September 2001, in the United States of America and other countries, new patterns and contexts of racial and ethnic profiling have reportedly been affecting a growing number of individuals and minority groups. In Europe, law enforcement officials have reportedly targeted similar groups, especially since the recent economic crisis. Racial and ethnic profiling has also been reported in other parts of the world, such as Africa, Asia and the Middle East. Racial and ethnic profiling can thus exacerbate discrimination already suffered as a result of ethnic origin or minority status.

3. The Special Rapporteur is mandated by Human Rights Council resolution 7/34 of 28 March 2008 to address the practice of profiling and how it relates to counter-terrorism measures. The successive mandate holders have addressed this issue through their country visits and communications to Member States. The current Special Rapporteur drew attention to the issue of racial profiling in a country visit report that he presented to the Human Rights Council (A/HRC/23/56/Add.2). In various reports, the Special Rapporteur has highlighted new exacerbating contexts and has urged States to undertake urgent and comprehensive measures to combat this phenomenon.

4. Important measures have been taken at the international, regional and national levels to address the challenge of racial and ethnic profiling, ranging from the elaboration of an international legal framework, to regular assessments of States by United Nations and regional mechanisms, to the enactment and strengthening of legislative and criminal justice processes at the national level, to better collection of data and the training of law enforcement officers. Nevertheless, racial and ethnic profiling has persisted and continues to pose a serious challenge to the realization of the rights of individuals of some racial, ethnic and religious groups, across the world, and particularly in the light of contemporary counter-terrorism measures.

5. In the present report, the Special Rapporteur summarizes his activities, examines the context that has led to the use of racial and ethnic profiling, and provides an overview of the different manifestations of racial and ethnic profiling by law enforcement agencies such as the police, immigration agencies and other security entities. He then provides an overview of the legal, policy and regulatory frameworks prohibiting racial profiling and of the relevant policies and laws that have been adopted at the international, regional and national levels, before presenting different examples of good practices that have been

initiated and implemented to counter the use of racial profiling in law enforcement, by international and regional organizations, Governments, law enforcement agencies themselves, and civil society. The conclusions and recommendations are outlined in section IV.

II. Activities of the Special Rapporteur

A. Country visits

6. The Special Rapporteur would like to thank the Government of Greece and welcomes the agreement on dates for his visit in May 2015. He also hopes to receive a positive reply to his requests to make visits to Argentina and South Africa before the end of 2015.

7. The Special Rapporteur renewed his requests to visit Fiji, India, Japan and Thailand, for which he was awaiting invitations at the time of writing.

8. The Special Rapporteur visited the Republic of Korea from 29 September to 6 October 2014 (see A/HRC/29/46/Add.1). He expresses his gratitude to the Government for its cooperation and openness in the preparation and conduct of his visit.

B. Other activities

9. The Special Rapporteur was the keynote speaker at a round table on racial and ethnic profiling in police stop-and-search operations, organized by the Federal Anti-Discrimination Agency of Germany and held on 16 June 2014 in Berlin. The conference brought together international experts and academics to discuss challenges and good practices in Europe on this issue.

10. On the margins of the twenty-sixth session of the Human Rights Council, on 26 June 2014, the Special Rapporteur held a side event on racism on the Internet and social media, with the participation of the Executive Secretary of the European Commission against Racism and Intolerance, the Vice-Chair of the Federal Commission against Racism, of Switzerland, and a representative of the Association for Progressive Communications (A/HRC/26/49).

11. On 24 and 25 March 2015, the Special Rapporteur was invited as a panellist to a United Nations Educational, Scientific and Cultural Organization (UNESCO) round table entitled "Fighting racism and discrimination: history, memory and contemporary challenges", held to commemorate International Day for the Elimination of Racial Discrimination, at UNESCO headquarters in Paris. The conference examined the use of archives relating to the slave trade for the preservation of historical memory and for awareness and education.

III. Racial and ethnic profiling in law enforcement agencies

A. Context

12. Racial profiling has been a long-standing issue of concern for this mandate. In a report to the Human Rights Council on the manifestations of defamation of religions, and in particular on the ongoing serious implications of Islamophobia, for the enjoyment of all rights by their followers, the then Special Rapporteur highlighted some cases of racial and

ethnic profiling and stressed his concern about individuals from minority groups or migrant backgrounds regularly being subjected to stops and searches, interrogations and arrests in a discriminatory manner by law enforcement and immigration officials, solely on the basis of their perceived ethnic or religious affiliation. He called upon States not to resort to these practices, which were discriminatory and prohibited by international law (A/HRC/15/53 and Corr.1).

13. The current Special Rapporteur has, in various reports, highlighted the continuing problem of racial and ethnic profiling. In particular, and with regard to counter-terrorism, he has noted that migrants and minority groups are particularly vulnerable to these law enforcement practices, and that the global economic crisis only exacerbated the discrimination already taking place. The Special Rapporteur has continued to receive reports of racial and ethnic profiling across the globe, which points to the persistence of the problem in regular law enforcement activities, not only in the area of counter-terrorism.

14. The present report is intended to highlight the continuing violations, and to propose measures to address the problem of racial and ethnic profiling. In the report, the Special Rapporteur illustrates some manifestations of racial and ethnic profiling by different law enforcement agencies in various parts of the world. He discusses the applicable legislation and standards at the international, regional and national levels, and provides some examples of good practices that have been implemented by Governments and local authorities as well as by civil society actors.

15. The report builds on the work of previous mandate holders, on studies and reports by other special procedures mandate holders, and on the current Special Rapporteur's previous studies. In order to discuss the different manifestations of profiling, and to look at good practices undertaken, the Special Rapporteur held an expert meeting, in partnership with the Faculty of Law of the University of California, Los Angeles, on 11 and 12 November 2014, that was attended by a wide range of experts, academics and representatives of civil society organizations. Discussions were held on the key trends in the different manifestations of racial and ethnic profiling in police activities, at border and immigration facilities, and in detention facilities, on the impunity and lack of accountability for such acts committed by law enforcement agents, and on the need for disaggregated data collection and analysis to document these manifestations and the need to propose alternative law enforcement methods. Views were exchanged on the key legal and policy measures that had been taken at the international, regional and national levels, and on some good practices in combating racial and ethnic profiling that had been taken by States, international and regional organizations, civil society and the private sector. Some of those practices are included in the present report. The Special Rapporteur thanks the Faculty of Law of the University of California, Los Angeles for its assistance in the successful outcome of the expert meeting.

B. Manifestations of racial and ethnic profiling by law enforcement agencies

16. Police, immigration and detention officials frequently employ racial and ethnic profiling, in many different and pernicious ways. Government policies may also facilitate discretionary practices that allow law enforcement authorities to target groups or individuals on the basis of their skin colour, dress or facial hair or the languages they speak. Implicit biases also sometimes motivate profiling. Although some studies have demonstrated how ineffective racial and ethnic profiling is, officials continue to use the

practice.¹ One manifestation is the use of stop and frisk or stop and check mechanisms to target minorities. This practice results in the disproportionate targeting of these often vulnerable populations.² For example, in one South Pacific State, black males were subject to field contact by police officers at a rate 2.4 times higher than their representation in the general population.³ In Europe, Roma communities are subjected to unequal levels of identity checks, and in some cases, the police stop Roma pedestrians three times more often than non-Roma pedestrians.⁴ In one North American state, despite accounting for only 24 per cent of the population, persons of African descent were the subject of 63.3 per cent of stops of civilians by the police.⁵

17. Additionally, the police may disproportionately target certain minority groups for traffic stops. In one North American state, observers have documented police targeting drivers unevenly on the basis of their appearance.⁶ The observers found no statistically significant difference in driving behaviour, yet 73.2 per cent of those stopped and arrested were persons of African descent even though such persons comprised only 13.5 per cent of all drivers and passengers.⁷ Another report found that, in a municipality where this group made up 67 per cent of the population, 85 per cent of cars stopped by the police were from this group, as were 90 per cent of those summoned to court and 93 per cent of those arrested; in addition, the use of force by police officers was, in 88 per cent of cases, directed against persons of African descent. Similarly, in the judicial system in the same city, this group accounted for 95 per cent of convictions for pedestrian offences and 92 per cent of offences of disturbing the peace.⁸

18. A related manifestation of racial and ethnic profiling occurs when officials perform identity checks, ostensibly to address irregular immigration. In these types of stops, police or immigration authorities demand the production of identity documents to verify residence status in the country. Authorities use identity checks to target these persons and to stop and arrest asylum seekers.⁹ In Europe, authorities are more likely to stop males of African and

¹ Open Society Institute, *Ethnic Profiling in the Moscow Metro* (New York, 2006), available from http://www.lamberthconsulting.com/uploads/Ethnic_Profiling.pdf, and American Civil Liberties Union Foundation of Massachusetts, *Black, Brown and Targeted: A Report on Boston Police Department Street Encounters from 2007–2010* (ACLU Racial Justice Program, 2014).

² Rachel Neild and others, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory* (New York, Open Society Institute, 2009), available from http://www.opensocietyfoundations.org/sites/default/files/profiling_20090526.pdf.

³ Flemington and Kensington Community Legal Centre, summary of Gordon and Henstridge first reports.

⁴ Open Society Institute, *"I Can Stop and Search Whoever I Want": Police Stops of Ethnic Minorities in Bulgaria, Hungary, and Spain* (New York, 2007), available from http://www.opensocietyfoundations.org/sites/default/files/profiling_20070419.pdf.

⁵ Rachel Neild and others, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*, and American Civil Liberties Union Foundation of Massachusetts, *Black, Brown and Targeted: A Report on Boston Police Department Street Encounters from 2007–2010*.

⁶ Amy Farrell and others, "Massachusetts racial and gender profiling final report: executive summary", Institute on Race and Justice (2004), available from http://irs.lib.neu.edu/cgi/viewcontent.cgi?article=1001&context=race_justice_pubs.

⁷ John C. Lamberth, "Data collection and benchmarking of the Bias Policing Project" (Lamberth Consulting, 2006).

⁸ United States Department of Justice, Civil Rights Division, "Investigation of the Ferguson Police Department", available from www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf.

⁹ Aida Alami, "African migrants in Morocco tell of abuse", *New York Times*, 28 November 2012. Available from www.nytimes.com/2012/11/29/world/middleeast/african-migrants-in-morocco-tell-of-abuse.html?pagewanted=all&_r=1& Nov. 28, 2012.

Middle Eastern origin and from other minority populations on the basis of their appearance. A study in one Eastern European State showed that the police there disproportionately targeted persons of non-Slavic appearance on the metro.¹⁰ Law enforcement officials have also targeted persons on the basis of their religion and conducted mass identity checks outside mosques.¹¹

19. Another manifestation of racial and ethnic profiling is the increased use of force against minority populations by law enforcement officials.¹² In one Latin American State, persons of African descent were subjected to lethal force by the police at a rate that was two times higher than their overall representation in the population.¹³ In the country concerned, lethal force by the police is frequently targeted at minority communities, often with the justification of controlling riots between those communities and the native population.

20. Racial and ethnic profiling in the context of immigration takes place at points of entry into States — official border crossings, and transportation hubs such as airports, railway stations and bus depots. At these locations, customs and border agencies force particular individuals or groups to undergo additional security checks and interviews. Often these persons are targeted because of the interrelatedness of immigration status with nationality, race or ethnicity. Security measures and surveillance policies enacted in relation to counter-terrorism efforts also motivate the use of racial and ethnic profiling. Indeed, around the world, States have regularized these processes such that they have become permanent fixtures of immigration systems.¹⁴

21. Within States, national and local authorities employ racial and ethnic profiling in their enforcement of immigration rules (A/HRC/17/33/Add.4). In some federal States, agreements between the central government and local police agencies lead to the overdelegation of front-end authority to persons likely to engage in profiling — a situation where non-immigration officials are directly enforcing immigration policy. Provinces and municipalities have enacted policies aimed at supplementing federal legislation, too. In both scenarios, discretionary powers enable profiling at the stop, arrest, investigation and prosecution stages.¹⁵

22. Profiling in immigration also limits the ability of victims to travel. For instance, States' refusal to issue birth registration and identification documents to members of particular ethnic groups impedes the movement of persons across borders and their access to State benefits (A/69/398). Sometimes, States permit or facilitate the use of racial and ethnic profiling by private actors. One Middle Eastern State allegedly restricts the movements of travellers of a particular ethnicity, including its own citizens. Furthermore, it reportedly allows an airline to subject this group to extensive search procedures (A/HRC/25/67). Profiling by private and governmental actors may also be facilitated by technology. Corporations have developed "risk profiling" software that they sell to law

¹⁰ Open Society Institute, *Ethnic Profiling in the Moscow Metro*.

¹¹ Rachel Neild and others, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*.

¹² Robert Chanin and others, "Restoring a national consensus: the need to end racial profiling in America", The Leadership Conference (2011).

¹³ Ignacio Cano, "Racial bias in police use of lethal force in Brazil", *Police Practice and Research: An International Journal* (2010).

¹⁴ Rachel Neild and others, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*.

¹⁵ Hiroshi Motomura, *Immigration Outside the Law* (Oxford University Press, 2014).

enforcement agencies for use at border checkpoints and in criminal databases. This has led to concerns about profiling being institutionalized.¹⁶

23. Racial and ethnic profiling is also manifested in the broad discretion allowed in States' criminal justice systems. Studies have identified a strong correlation between minority status and harsher criminal sentences.¹⁷ Evidence from some States shows that implicit bias, including stereotypes that people of colour are violent, affects criminal investigations.

24. High levels of discretion in States' criminal justice systems facilitate racial and ethnic profiling and result in a disproportionate representation of minority populations in detention facilities.¹⁸ In 2014, 60 per cent of those incarcerated in one North American state were members of racial and ethnic minorities.¹⁹ Additionally, several states have initiated campaigns to crack down on drug use. Those campaigns have resulted in a severe disproportionality of minorities in the composition of prison populations.²⁰ For example, one study carried out in a North American state found that males of African descent were nearly 12 times more likely to be sent to prison for a drug offence than other men, despite surveys showing that both groups used and sold drugs at roughly the same rates.²¹

C. Legal policy and regulatory frameworks prohibiting racial and ethnic profiling, and similar measures, policies and laws adopted at the international, regional and national levels

25. In response to the manifestations of the phenomenon described above, the Special Rapporteur recalls that international and regional organizations and States have adopted a variety of laws and instruments to combat and prohibit the use of racial and ethnic profiling.

I. International legal policy and regulatory frameworks

26. Racial and ethnic profiling is prohibited under international human rights law and is contrary to various provisions such as the right to live free from racial discrimination, the right to equality before the law, the right to personal freedom and security and the right to the presumption of innocence. More specifically, the International Convention on the Elimination of All Forms of Racial Discrimination prohibits, in its articles 2, 4, 5 and 7, the use of racial profiling. Furthermore, the general equality provision of the International Covenant on Civil and Political Rights (art. 26) and other specific guarantees therein

¹⁶ Frank Gardner, "Risk profiling software tackles the terrorist threat", BBC news website, 21 November 2012, available from <http://m.bbc.com/news/technology-20412478>.

¹⁷ William T. Pizzi, Irene V. Blair and Charles M. Judd, "Discrimination in sentencing on the basis of Afrocentric features", *Michigan Journal of Race and Law*, vol. 10 (2005), p. 327.

¹⁸ Angela Y. Davis and Dylan Rodriguez, "The challenge of prison abolition: a conversation", *Social Justice*, vol. 27 (2000), p. 212.

¹⁹ Christina R. Rivers, "Civil death and the execution of democracy: black political power in the 'New Jim Crow' era of mass incarceration", National Conference of Black Political Scientists (Wilmington, 2014), available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2404105.

²⁰ James Austin and others, "The use of incarceration in the United States", *Critical Criminology*, vol. 10 (2001), pp. 17–41 (2001); and Frank Rudy Cooper, "The un-balanced Fourth Amendment: a cultural study of the drug war, racial profiling and Arvizu", *Villanova Law Review*, vol. 47 (2002), p. 851.

²¹ Marc Mauer and David Cole, "Five myths about incarceration", *Washington Post*, 17 June 2011, available from http://www.washingtonpost.com/opinions/five-myths-about-incarceration/2011/06/13/AGfWvYH_story.html.

prohibit racial discrimination in relation to "the right to liberty and security of person", outlaw "arbitrary arrest or detention", and bar deprivation of liberty "except on such grounds and in accordance with such procedure as are established by law" (art. 9 (1)).

27. The Special Rapporteur recalls that a number of United Nations human rights mechanisms have addressed the issue of the use of racial and ethnic profiling in the police, at immigration and border controls and in detention facilities. More specifically, the Committee on the Elimination of Racial Discrimination has made it clear that the International Convention on the Elimination of All Forms of Racial Discrimination prohibits States parties from carrying out profiling on the basis of race or ethnicity. In its general recommendation No. 13 on the training of law enforcement officials in the protection of human rights, the Committee recalled the provisions of article 2 of the Convention, which require States parties to ensure that public authorities and institutions do not engage in racial discrimination, and the undertaking by States parties to guarantee the rights, protected under article 5 of the Convention, to equality before the law, without distinction as to race, colour or national or ethnic origin. The Committee also explained that those obligations relied on national law enforcement officers who should be properly informed of their State's obligations and of the Code of Conduct for Law Enforcement officials (see General Assembly resolution 34/169, annex).

28. Furthermore, the Committee reiterated its position on racial and ethnic profiling in its general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee advised that States should prevent questioning, arrests and searches that are based solely on the physical appearance of a person which exposes the person concerned to greater suspicion. Specifically, the relevant State officials include the police, army personnel, customs authorities, and persons working in airports, penal institutions and social, medical and psychiatric services. The Committee has directly applied these recommendations on racial and ethnic profiling to its evaluations on individual States parties.

29. The Human Rights Committee concluded in 2009 that a case of racial profiling in the context of immigration control constituted discrimination. In that particular case, specifically assessing identity checks for immigration purposes in the light of articles 2 (3) and 26 of the International Covenant on Civil and Political Rights, the Committee considered that:

Identity checks carried out for public security or crime prevention purposes in general, or to control illegal migration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the people subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only people with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the people concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.²²

30. Other United Nations mechanisms have also affirmed States' obligations to eliminate racial and ethnic profiling. In the Durban Declaration and Programme of Action, States were explicitly called upon to design, implement and enforce effective measures to eliminate this phenomenon.²³ The Working Group on the Universal Periodic Review has regularly reminded States of their obligations to combat racial and ethnic profiling. In 2007,

²² Communication No. 1493/2006, *Rosalind Williams Lecraft v. Spain*. Views adopted on 27 July 2009.

²³ See A/CONF.189/12 and Corr.1, chap. I, para. 72.

the Working Group of Experts on People of African Descent devoted its sixth session to this issue and adopted the definition of the practice outlined in the Durban Declaration and Programme of Action. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism called attention to this issue too, in the context of “terrorist profiles” (A/HRC/13/37).

31. Finally, in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,²⁴ as a result of the collaboration of several special procedures mandate holders, it was recommended that States enhance their engagement in broad efforts to combat negative stereotypes of, and discrimination against, individuals and communities on the basis of their nationality, ethnicity, religion or belief.

2. Regional legal policy and regulatory frameworks

32. As regards Europe, the European Convention on Human Rights does not contain explicit provisions regarding racial and ethnic profiling. However, a number of rights protected by the Convention are relevant to making legal arguments and claims in relation to the practice, in particular provisions such as the right to liberty and security (art. 5), the right to respect for private and family life (art. 8), the right to an effective remedy (art. 13) and prohibition of discrimination (art. 14). Moreover, there are two relevant protocols to the European Convention on Human Rights, which provide for freedom of movement (protocol No. 4) and a general prohibition on discrimination (protocol No. 12).²⁵

33. The European Court of Human Rights has ruled on an application regarding racial profiling. It found that the practice constituted unlawful discrimination.²⁶

34. The European Commission against Racism and Intolerance, established in 1993 by the Council of Europe, underlined, in its general policy recommendation No. 11 on combating racism and racial discrimination in policing, that racial and ethnic profiling was not an acceptable or valid response to the challenges of the everyday reality of combatting crime, including terrorism. The Commission stressed that racial and ethnic profiling was a form of racial discrimination, and thus violated human rights, reinforced stereotypes and lacked effectiveness, and led to less human security (para. 25). Moreover, the Commission has issued four specific recommendations to members of the European Union on this issue, namely that member States should “clearly define and prohibit racial and ethnic profiling by law” (para. 1); “carry out research on racial profiling and monitor police activities in order to identify racial profiling practices, including by collecting data broken down by grounds such as national or ethnic origin, language, religion and nationality in respect of relevant police activities” (para. 2); “introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria” (para. 3); and “train the police on the issue of racial profiling and the use of the reasonable suspicion standard” (para. 4).

²⁴ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Conclusions and recommendations from the four regional expert workshops organized by the Office of the High Commissioner for Human Rights, in 2011, and adopted by experts in Rabat on 5 October 2012. Available from http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

²⁵ Open Society Justice Initiative, Case Digests, *International Standards on Ethnic Profiling: Standards and Decisions from the European Systems* (2013).

²⁶ European Court of Human Rights, *Timishev v. Russia*, Application Nos. 55762/00 and 55974/00, Judgment of 13 December 2005.

35. The Commissioner for Human Rights of the Council of Europe has consistently condemned the practice of racial and ethnic profiling and has stated that it constitutes a potential violation of article 14 of the European Convention on Human Rights. The Commissioner has warned about the underlying assumption behind terrorist profiling and has denounced the large number of innocent people harassed as a result of the practice. The Commissioner has also questioned the effectiveness and results of the practice, warned against its deleterious effects on police-community relations, and recommended that effective policing methods be developed that are based on individual behaviour or accumulated intelligence or both. Similarly, the Commissioner has stated that stop-and-search actions based on ethnic or religious grounds are counterproductive and violate human rights standards. The Commissioner has called for the establishment of a reasonable suspicion standard as the basis for stop and search by law enforcement officials. Finally, the Commissioner has denounced ethnic profiling practices targeting Roma, including special (biometric) databases, police raids and discriminatory border checks, as well as the disproportionate levels of stop and search, and has called for an end to these practices, and has recommended the monitoring of police activities, in particular through the collection of disaggregated data.²⁷

36. The European Union has adopted a legal framework with provisions against racial and ethnic profiling, including in the consolidated version of the Treaty on European Union and the consolidated Treaty on the Functioning of the European Union. Moreover, the Charter of Fundamental Rights of the European Union has provisions for guaranteeing equality before the law and prohibiting discrimination. In addition, the Council of the European Union adopted its racial equality directive on 29 June 2000, which enshrines the principle of equal treatment of persons, irrespective of their racial or ethnic origin.²⁸

37. The Special Rapporteur also notes that the European Parliament issued a recommendation on profiling, in particular on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs, and border control, stating that racial and ethnic profiling raised "deep concerns about conflict with non-discrimination norms".²⁹ The European Parliament stressed that the use of ethnicity, national origin or religion as factors in law enforcement investigations "must pass the scrutiny tests of effectiveness, necessity and proportionality", warned that "profiling based on stereotypical assumptions may exacerbate sentiments of hostility and xenophobia in the general public", and recommended the adoption of a clear definition of profiling, the use of anonymous ethnic statistics to identify discrimination in law enforcement practices, the establishment of strong safeguards, and effective and accessible redress mechanisms for victims of profiling.

38. The European Union Network of Independent Experts on Fundamental Rights issued an opinion on racial and ethnic profiling in 2006, in which it recommended the adoption of a legal framework to prohibit this practice, to the extent that factors such as race or ethnicity or religion or national origin should not be used as indicators of criminal behaviour, either in general or in the specific context of counter-terrorism. It also recommended the use of statistics to highlight the discriminatory attitudes of law enforcement agencies practising racial profiling. The Network recommended States to define with the greatest clarity possible the conditions under which law enforcement

²⁷ Council of Europe Commissioner of Human Rights, *Human Rights of Roma and Travellers in Europe* (Strasbourg, Council of Europe Publishing, 2012), p. 84.

²⁸ Council directive of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC).

²⁹ European Parliament recommendation to the Council of 24 April 2009 on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control (2008/2020(INI)).

authorities may exercise discretionary powers in areas such as identity checks or stop-and-search procedures and to sanction any behaviour amounting to racial or ethnic profiling, not only through the use of criminal penalties but also by providing civil remedies to victims or by means of administrative or disciplinary sanctions.³⁰

39. In 2010, the European Union Agency for Fundamental Rights issued a comprehensive report on racial and ethnic profiling that made reference to European Union norms on the protection of personal data and non-discrimination. The Agency has warned that stop and search motivated “solely or mainly” on the basis of one’s race, ethnicity or religion constitutes discrimination and is unlawful. In its report, the Agency suggested that suspicion should be based on individual behaviour (that does not include physical appearance) and has warned about the damaging effects of ethnic profiling on community relations and about the inefficiency of the practice. The Agency recommended that officers receive training on racial and ethnic profiling and that their stop-and-search operations be monitored through the collection of racially disaggregated data, provided that anonymity and informed consent are guaranteed.³¹

40. The African Charter on Human and Peoples’ Rights is intended to promote and protect human rights and basic freedoms on the continent. This instrument contains provisions that contribute to the prohibition of racial and ethnic profiling, such as those on the right to freedom from discrimination (art. 2); the right to equality before the law and equal protection of the law (art. 3); the right to personal liberty and protection from arbitrary arrest (art. 6); and the right to freedom of movement (art. 12).³²

41. The Organization of American States has several human rights instruments to combat discrimination. The American Convention on Human Rights contains provisions on the right to personal liberty (art. 7); the right to privacy (art. 11); freedom of movement and residence (art. 22); and the right to equal protection (art. 24). In 2006, the Permanent Council of the Organization of American States set up a working group to draft the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, which was adopted by the Organization’s General Assembly on 5 June 2013 and provides a consolidated legal framework to eradicate racism and intolerance in the Americas, although at the time of writing the present report it had not entered into force.³³

42. The Inter-American Commission on Human Rights, in 2009, defined racial and ethnic profiling as a tactic “adopted for supposed reasons of public safety and protection” that is “motivated by stereotypes based on race, colour, ethnicity, language, descent, religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions”, and that “tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes”.³⁴ Similarly, the Inter-American Commission, in a report on the situation of persons of African descent, stated that such persons were more likely to be suspected, chased, prosecuted and condemned, compared to the rest of the population. The Commission has received reports detailing the selective arrest of such persons on the

³⁰ European Union Network of Independent Experts on Fundamental Rights, “Ethnic profiling” (CFR-CDF Opinion4 2006), p. 7.

³¹ European Union Agency for Fundamental Rights, *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling: A Guide* (Luxembourg, Publications Office of the European Union, 2010), p. 64.

³² African Commission on Human and Peoples’ Rights. Available from www.achpr.org/instruments/achpr/ (accessed on 2 February 2015).

³³ Available from http://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism.asp

³⁴ Inter-American Commission on Human Rights, report No. 26/09 (admissibility and merits), case 12.440, Wallace de Almeida (Brazil), 20 March 2009, para. 143.

grounds of racial profiling, unjustified police surveillance and negative interactions with the police, disproportionate arrest rates, and their overrepresentation in the criminal justice system.

D. Examples of initiatives taken at the national level to counter and challenge racial and ethnic profiling

43. In the section below, the Special Rapporteur presents an overview of a number of legislative, policy and institutional initiatives that have been taken by States, and other stakeholders including civil society actors, to counter and challenge racial and ethnic profiling.

1. National legal frameworks

44. The issue of racial and ethnic profiling has been addressed through national frameworks and different initiatives such as guides and recommendations published by Governments. In the United Kingdom of Great Britain and Northern Ireland, the Race Relations (Amendment) Act 2000 extended the prohibition on racial discrimination to the performance of public functions by public authorities, including the police, the border control agency and other government departments. Section 19B (1) of the Act now provides that "it is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination".³⁵

45. Also in the United Kingdom, the Equality Act 2010 unifies existing non-discrimination laws under a single act and has established a legal framework to protect individual rights and advance equal opportunity. The Act applies to all organizations providing a public service, including the police service, customs and excise officers, tax officers, health and safety officers, immigration authorities, and the prisons and probation service.³⁶ The aims of the Act are to eliminate unlawful discrimination, harassment and victimization and other conducts prohibited under its provisions, to advance equality of opportunity for minority groups and to foster good relations between minorities and the rest of the community.

46. In 2003, the Government of the United States issued a guidance note in 2003 regarding interactions between different races and officers of the federal law enforcement agencies. The guidance note, which was updated in December 2014, originates from the Department of Justice³⁷ and establishes mechanisms to combat racial and ethnic profiling in law enforcement. In regard to routine or spontaneous law enforcement decisions, the guidance note states that federal law enforcement officers may not use race or ethnicity to any degree in a specific suspect description. In conducting activities in connection with a specific investigation, federal law enforcement officers may consider race and ethnicity only to the extent that (a) there is trustworthy information; (b) the information is relevant to the locality or time frame; and (c) the information links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. Where there are investigations or situations of threat regarding national security, catastrophic events or border control matters, federal law enforcement officers may not consider race or ethnicity

³⁵ Available from <http://www.legislation.gov.uk/ukpga/2000/34/contents>.

³⁶ Available from <http://www.legislation.gov.uk/ukpga/2010/15/contents>. The Equality Act 2010 is law in England, Scotland and Wales. Northern Ireland is covered by separate legislation.

³⁷ Available from <http://csgjusticecenter.org/law-enforcement/publications/guidance-for-federal-law-enforcement-agencies-regarding-the-use-of-race-ethnicity-gender-national-origin-religion-sexual-orientation-or-gender-identity/>.

except to the extent permitted by the Constitution and laws. The guidance note only applies to federal agencies and not to state and local authorities, which conduct the vast majority of the law enforcement functions, but the updated version now applies to Department of Homeland Security and intelligence activities. The Special Rapporteur is pleased with this updated and comprehensive version and hopes that it may serve as a model of good practice for other authorities, as well as in other countries.

47. In the United States of America, states and local authorities have enacted legislation that outlaws racial profiling while requiring data collection. At the federal level, the End Racial Profiling Act was introduced into the Senate in May 2013; at the time of the writing of the present report, it was still under discussion. This Act would prohibit law enforcement personnel and agencies from engaging in racial profiling and would require federal law enforcement agencies to maintain adequate policies and procedures to eliminate racial and ethnic profiling and to cease the existing practices that at present allow it to continue. The Act would also require state or local government entities or tribal councils applying for grants or federal funding to certify that they maintain adequate policies and procedures for eliminating racial and ethnic profiling and have eliminated any such existing practices.³⁸ Finally, the Act would authorize the Attorney-General to award grants and contracts for the collection of data relating to racial and ethnic profiling and the development of good practices and systems to eliminate such practices.

48. With regard to Sweden, the Aliens Act provides that a person may not be stopped or checked solely on account of his or her skin colour, name, language or other similar characteristic. In that connection, standards and guidance can provide officers with clear instructions on permissible versus impermissible uses of ethnicity, race and national origin in conducting their work.³⁹

2. Policy and institutional standards

49. In some countries, codes of conduct have been developed for law enforcement agents which prohibit the use of ethnicity, religion and national origin in targeting persons as suspects, which also include the requirement that law enforcement officers base their decisions on reasonable suspicion.⁴⁰ In France, the code of conduct of the national police prohibits discrimination and calls for polite and respectful treatment of the public and anyone apprehended. This code applies to all national law enforcement officials, including those carrying out immigration and counter-terrorism functions.⁴¹ Police codes of conduct set out similar standards in Austria and in Northern Ireland.

50. The Special Rapporteur has been informed that a number of good practices based on behavioural profiles have been implemented in immigration enforcement. This is important in focusing officers' attention on behavioural risk factors rather than on assumptions about nationality, race or ethnicity. For instance, Brussels Airport's information-based behavioural profiling system is an example of an intelligence-based system of profiles that uses behavioural factors.

51. The use of strategic action plans appears to be among the positive steps taken by States in response to an identified problem; such plans are sometimes politically mandated but are also undertaken by senior law enforcement leadership. They represent a political

³⁸ Available from <https://www.congress.gov/bills/113/congress/senate-bill/1038> (accessed on 17 February 2015).

³⁹ Aliens Act (*Utlänningslag*) (2005:716).

⁴⁰ Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices* (New York, 2012), p. 38.

⁴¹ Commission nationale pour la déontologie de la sécurité, saisine No. 2009.77.

commitment to take steps to address a problem and can serve as a foundation and road map for action for tackling racial and ethnic profiling.⁴²

3. Oversight and equality bodies

52. A number of States have established law enforcement oversight bodies and complaints mechanisms to address racial and ethnic profiling. Such mechanisms play an important role in identifying and drawing attention to discriminatory law enforcement practices and in proposing remedies. These institutions can be national equality bodies, or specialized police complaint and oversight bodies. In the United Kingdom, the Independent Police Complaints Commission investigates complaints and allegations of misconduct and can make policy recommendations. The Commission has overall responsibility for the police complaints system, and is charged by law with increasing public confidence in the police complaints system in England and Wales. The Commission is independent from the police or government.⁴³

53. In addition to external civilian oversight of law enforcement, two other models exist in Europe. Denmark, Norway and Sweden have special law enforcement officers attached to the Prosecutor-General's office who receive and investigate complaints against police officers.⁴⁴ In France, the National Commission on Police Ethics, an independent administrative authority created in 2000, ensures compliance with ethics rules by French law enforcement officers. Individuals can present complaints to the Commission via a member of the National Assembly or the Senate, the Ombudsman's office, the High Authority against Discrimination and for Equality, the Children's Defender, or the General Supervisor of Places of Detention and Deprivation of Liberty.

54. Other countries have set up equality bodies that undertake investigations or provide redress in cases of discrimination. Many have powers to investigate practices, review policies and issue recommendations. In that connection, in Canada, the Ontario Human Rights Commission published recommendations to end racial and ethnic profiling in a 2003 report entitled "Paying the price: the human cost of racial profiling".⁴⁵ In the Netherlands, the Dutch National Bureau against Discrimination has wide-ranging powers which include oversight of law enforcement. In Sweden, the Ombudsman against Discrimination may deal with complaints against the police under the 2010 anti-discrimination law. In Northern Ireland, the Human Rights Commission examines cases of racial and ethnic profiling at borders by immigration officers, using direct observation and interviews with immigration officers about their decision-making.⁴⁶

55. Also regarding the United Kingdom, the Metropolitan Police Authority in London has set up a scrutiny panel on stop and search, which has statutory responsibility to hold the Metropolitan Police Service accountable for its performance. In the United States, the American Civil Liberties Union, a non-governmental organization (NGO), has taken a lead role in advocating for investigations by police-community advisory bodies.⁴⁷ In Germany,

⁴² Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 51.

⁴³ Independent Police Complaints Commission website, <https://www.ipcc.gov.uk/> (accessed on 16 March 2015).

⁴⁴ Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 57.

⁴⁵ Available from <http://www.ohrc.ca/en/paying-price-human-cost-racial-profiling>

⁴⁶ Northern Ireland Human Rights Commission, *Our Hidden Borders* (Belfast, 2009). Available from: <http://www.statewatch.org/news/2009/apr/Our%20Hidden%20Borders%20April%202009.pdf>.

⁴⁷ See <http://crr.ca/divers-files/en/onGoing/racProf/rep/eRacProfRepRacProfFctSh.pdf>.

the Bureau for the Implementation of Equal Treatment NGO⁴⁸ has successfully challenged, in the administrative courts, the practice of identity checks carried out by the border police in trains and train stations solely on the basis of racial and ethnic criteria and in a discretionary and discriminatory manner. Finally, in Australia in 2013, the Victoria Police made groundbreaking announcements that it would invite communities to comment about its practices and then undertake a self-examination, set up a policy on field contacts, which would include data collection, provide cross-cultural training to its agents, and publish a public report on the results of the exercise.⁴⁹

4. Training and awareness-raising

56. The Special Rapporteur was made aware of different examples of training undertaken by law enforcement agencies to eliminate racial and ethnic profiling carried out by their staff. However, it is important to note that this practice is difficult to eradicate by training measures alone, and that these should be combined with other measures to reduce the use of profiling, such as good supervisory practices and clear operational procedures. Diversity and sensitivity training can also be found in other parts of the public sector, beyond law enforcement. Cultural sensitivity training seeks to educate officers about the cultures of specific ethnic groups with whom they have frequent contact but with whom they lack personal familiarity.⁵⁰

57. In Ireland, and in Northern Ireland (United Kingdom), the “Diversity Works” training, developed jointly by the two police agencies, provides intercultural and diversity training for law enforcement officers. In Sweden, officers receive “specific police tactics” training, which addresses racial and ethnic profiling and explains applicable standards and practical examples to eliminate the practice.⁵¹ As regards Belgium, the Belgian Federal Judicial Police has two experts on Islam (trained in Islamic and Arabic studies), who provide advice and training to police officers with counter-terrorism responsibilities and encourage them not to rely on stereotypes or profiling when making assessments of individuals or organizations.⁵²

58. The Special Rapporteur was informed that another set of measures that have been taken by some States concern policy audits to identify institutional factors that may be driving or permitting racial and ethnic profiling. Such audits provide policy recommendations for addressing racial and ethnic profiling. They give law enforcement institutions the opportunity to review their policies both force-wide and at the local level, to learn how policies are translated into practice, to assess their effectiveness, and to measure their impact on different communities.⁵³

59. Such audits have been used to address ethnic profiling by police forces in Canada and in the United Kingdom, more specifically to review the use of stop-and-search powers by these law enforcement agencies. In Northern Ireland, the Police Service is required to consult on the impact of all changes to policies; those found to have a disproportionate

⁴⁸ Büro zur Umsetzung von Gleichbehandlung e.V.

⁴⁹ See http://www.policeraccountability.org.au/wp-content/uploads/2014/03/Equality-is-not-the-same_Victoria-Police-Response-to-Community-Consultation-and-Reviews2.pdf

⁵⁰ Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 125.

⁵¹ *Ibid.*

⁵² Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 133.

⁵³ *Ibid.*, p. 135.

impact on specific communities have been amended as a result.⁵⁴ In the Netherlands, the Amsterdam Police has contracted independent auditors to examine the organization and its work. One of the auditors focused on the information and preconceptions that drive police choices about interventions. That research was followed up by a qualitative study involving interviews with between 50 and 60 police officers about their rationale for deciding who to stop and search.⁵⁵ As regards Romania, the Romanian Police Strategic Initiative developed a similar model for assessing the policing of Roma persons.⁵⁶

5. Reaching out to minorities

60. Another important good practice is the recruitment of persons from minority backgrounds to law enforcement agencies. Some States, for example in Europe, have set up specialized diversity units to fight racial and ethnic profiling and to increase their agencies' representativeness and diversity. These units can address diversity issues within the law enforcement agency, and through outreach to minority communities.

61. The Special Rapporteur considers that community outreach and involvement constitute another set of good practices. Efforts to address racial and ethnic profiling should involve local communities at the grass-roots level; this includes the law enforcement agencies, which must be engaged within their communities in order to gain their trust and respect. In the United Kingdom, the West Yorkshire Police regularly holds "street briefings", where senior officers give briefings in public places such as parks, community centres and commercial thoroughfares. Members of the public can listen to the briefing, which is given by officers before they go on patrol, and are invited to join in and highlight local issues and concerns. The reaction to these briefings has been positive, as they increase visibility and help officers to understand and target local issues.⁵⁷ In the Netherlands, the National Diversity Expertise Centre has an expert group of approximately 50 police officers of different ethnic backgrounds who are seconded to the group for up to 80 hours a year on an as-needed basis. The expert group can be called on to troubleshoot problems in multi-ethnic areas. It not only addresses issues as they arise, but also assists the police service in identifying any relevant findings, such as a lack of minority representation in law enforcement.⁵⁸ In Ireland, the interracial cultural office holds annual consultations with ethnic minority communities to discuss good practices, minorities' needs and concerns, and the work of ethnic liaison officers, among other topics.⁵⁹ Other positive examples identified include working with traditionally marginalized groups such as young people, travellers and irregular migrants. In South Africa, the African Centre for Migration and Society has worked with members of migrant communities who have been victims of xenophobic attacks and whose shops have been targeted, together with local police and community leaders, to end discrimination, promote dialogue and enquire into policing practices.

6. Data collection

62. Finally, the Special Rapporteur wishes to recall the importance of disaggregated data collection in regard to racial and ethnic profiling, which is essential in order to measure the

⁵⁴ Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 136.

⁵⁵ *Ibid.*

⁵⁶ See <http://www.europeandialogue.org>.

⁵⁷ See <http://www.westyorkshirepolice.uk/hatecrime>.

⁵⁸ Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 155.

⁵⁹ Justice Initiative interviews with Travellers, June 2008, Caroline Keane, Pavee Point Travellers' Centre, June 2008, Finglas Gardai, June 2008.

actions of law enforcement agencies, particularly in connection with discretionary actions such as identity checks and stop and search. Data collection can serve as a tool to increase the transparency and accountability of law enforcement agencies. In Europe, the United Kingdom is the only country to systematically gather national data on law enforcement and ethnicity under legal mandate. British law requires police forces in England and Wales to gather ethnic data on police stop-and-search practices.⁶⁰ The Suffolk County and West Yorkshire police forces issue a receipt to persons who have been stopped, which records details of the reason for the stop, and the identity both of the person concerned and of the police officer. A similar initiative has been developed in the municipality of Fuenlabrada, Spain, with the support of the European Commission. Such data collection can be a tool to reduce ethnic profiling and to improve trust in the police within minority communities. In the United States, in New York, the Legal Aid Society has launched the "Cop Accountability Program", a database containing information about wrongdoing by New York City police officers, which was set up to help public defenders at court hearings to contest the credibility of police officers who have engaged in misconduct and misbehaviour. Using such information to monitor the performance of law enforcement agents can reduce their individual discretionary powers and oblige them to rely on objective indicators of suspicion rather than on subjective factors, when deciding whom to stop. This good practice has been shown to lead to increased police efficiency.

IV. Conclusions and recommendations

63. Racial and ethnic profiling in law enforcement constitutes a violation of human rights for the individuals and groups targeted by these practices, because of its fundamentally discriminatory nature and because it exacerbates discrimination already suffered as a result of ethnic origin or minority status. Furthermore, racial and ethnic profiling harms already tenuous relationships between law enforcement agencies and minority communities, at a time when members of minority communities need to be reassured about their inclusion and participation in society. Unfortunately, the use of racial and ethnic profiling has increased following terrorist attacks in the United States and in Europe. The practice has targeted particular individuals and communities solely on the basis of their race, ethnicity, national origin or religion, and has attracted disproportionate attention from law enforcement agencies at a time when their resources are scarce.

64. Combating the use of racial and ethnic profiling in law enforcement constitutes a new and complex challenge. The Special Rapporteur nonetheless stresses that the Durban Declaration and Programme of Action, other international human rights instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, and certain regional instruments referred to earlier provide a comprehensive framework to combat the use of racial and ethnic profiling in law enforcement. To that end, the Special Rapporteur welcomes the continued interest and attention of the Committee on the Elimination of Racial Discrimination, which has issued useful general recommendations to States parties in this regard.

65. The Special Rapporteur notes the numerous legal and policy efforts that have been initiated at the regional and national levels to address the use of racial and ethnic profiling and to offer viable and credible alternatives. Legislative measures are central to any strategy to combat discrimination and racism by law enforcement agencies; for

⁶⁰ Section 95 of the Criminal Justice Act 1991.

this reason, the Special Rapporteur encourages States that have not enacted specific legislation outlawing the use of racial and ethnic profiling to consider doing so.

66. The Special Rapporteur recommends a clear and unequivocal prohibition of the use of racial and ethnic profiling by law enforcement agencies. Outlawing racial and ethnic profiling would require modifying national legislation to incorporate an express prohibition on the use of such profiling. The outlawing of racial and ethnic profiling should also be considered at the regional level.

67. The Special Rapporteur calls upon political leaders and heads of law enforcement agencies to speak out publicly against discrimination and to avoid making statements linking race or ethnicity to criminal behaviour, irregular migration or terrorism, in order to repair the harm caused to minority communities by the use of racial and ethnic profiling and to ensure that these groups and individuals are able to fully integrate into their societies.

68. The Special Rapporteur recommends to States to gather law enforcement data, including statistics disaggregated by ethnicity and race, which are essential in order to prove the existence and the extent of racial and ethnic profiling. Such statistics are an essential tool for enabling the detection of law enforcement practices that focus disproportionate and unwarranted attention on racial and ethnic minorities based on stereotypes about ethnicity and crime. In order to properly collect such data, close scrutiny of the three main stages of collection, storage and access is required, in order to prevent any possible misuse of the data. This is particularly important in law enforcement, where there are clear risks that ethnic data could be used to facilitate racial and ethnic profiling, rather than to reduce it. Data protection standards must balance the need of law enforcement to collect and retain data for the purposes of detecting, preventing and investigating crime, against the right to privacy and the presumption of innocence.

69. When statistics, disaggregated by race and ethnicity, are available on law enforcement actions, they provide an important insight into law enforcement practices and are the cornerstone that proves the use of racial and ethnic profiling. These statistics can be useful for the development of new policies and practices, particularly where census data are not available or appear to be inaccurate, or where there are no available law enforcement data and there are concerns about racial profiling. Similarly, sharing data with minority communities is a positive step taken by some States which should be further encouraged.

70. Furthermore, the Special Rapporteur encourages investigative oversight bodies to monitor the conduct and practices of law enforcement agencies and to investigate individual complaints. Oversight bodies should have the authority to address allegations of racial and ethnic profiling, and should inform practical recommendations for policy changes in order to eliminate the use of racial and ethnic profiling. Such bodies should also be able to collect data to monitor direct and indirect discrimination and to conduct self-initiated investigations, as these are fundamental in identifying discrimination such as profiling by law enforcement agencies.

71. The Special Rapporteur recommends that law enforcement agencies adopt a practical and holistic approach to training. Practical training linked to specific powers, actions and activities of law enforcement is usually more effective than general diversity training. Training should be combined with other complementary measures to reduce ethnic profiling, such as supervisory practices and operational procedures, with the participation of minority communities.

72. The Special Rapporteur also strongly recommends that law enforcement agencies provide their officers with clear standards and instructions on permissible

versus impermissible uses of ethnicity, race and national origin in conducting their work. Requiring that law enforcement officers have objective grounds for reasonable suspicion on the basis of a person's behaviour rather than on the basis of their appearance is a fundamental safeguard against ethnic profiling and should be clearly established as a prerequisite before any police or immigration stop. Operational protocols, regulations and training should provide detailed and practical guidance for all law enforcement officers on how to carry out their duties in full compliance with non-discrimination standards.

73. In this connection, the Special Rapporteur calls for a limitation of the discretionary powers of law enforcement agents to reduce the risks of racial and ethnic profiling. There are several approaches to limiting discretion; they are not mutually exclusive but can be used in a complementary manner. Such strategies may include improving the quality and precision of intelligence-gathering and making sure that law enforcement agents use this information in their decision-making, increasing the supervision of law enforcement officers' discretionary decisions, and enhancing civilians' understanding of their rights and responsibilities in encounters with law enforcement agents and their ability to hold them accountable for their use of their powers. Similarly, civilian monitors, civil society actors and international organizations should be given the necessary access to monitor effectively the checks and controls of the different types of law enforcement agencies.

74. The Special Rapporteur reminds all stakeholders of the importance of information-sharing: information should be disseminated appropriately to the different minority communities. Moreover, law enforcement agencies should welcome and support voluntary contacts and interaction with civilians, which demonstrate commitment to transparency and community oversight. In this regard, the Special Rapporteur encourages outreach to minority communities and recommends better collaboration between law enforcement agencies and minority communities.

75. Finally, combating the use of racial and ethnic profiling by law enforcement agencies requires a multi-stakeholder approach. In this regard, the role of civil society is fundamental. The Special Rapporteur has highlighted the work of civil society actors in public education, and advocacy, including efforts to lobby for the passage of data collection and anti-profiling legislation, as well as to litigate on behalf of individuals who have been victims of these practices by law enforcement agencies.

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Agenda item 9

**Racism, racial discrimination, xenophobia and related
forms of intolerance, follow-up to and implementation
of the Durban Declaration and Programme of Action****Report of the Special Rapporteur on contemporary forms of
racism, racial discrimination, xenophobia and related
intolerance, Mutuma Ruteere****Addendum****Visit to the Republic of Korea^{*}***Summary*

At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the Republic of Korea from 29 September to 6 October 2014.

In the present report, the Special Rapporteur addresses the legal and institutional framework for combating racism and the various policies and initiatives undertaken against racism and xenophobia by the Government, the national human rights institution and civil society. He then examines the main challenges the country faces in the fight against racism, racial discrimination, xenophobia and related intolerance, including issues related to the situation of migrants, workers in the agriculture sector and foreign seafarers, as well as acts and expressions of racism and xenophobia in the media and in the private sphere. He discusses the situation of marriage migrants and multicultural families. His recommendations to the Government and other stakeholders touch upon the main issues, such as the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the enactment of a comprehensive anti-discrimination law.

^{*} The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.



Annex*[English only]*

**Report of the Special Rapporteur on contemporary forms of
racism, racial discrimination, xenophobia and related
intolerance, Mutuma Ruteere, on his visit to the Republic of
Korea (29 September–6 October 2014)**

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I. Introduction

1. At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the Republic of Korea from 29 September to 6 October 2014.
2. The Special Rapporteur travelled to the capital city, Seoul, as well as Sejong City, Busan, Changwon and Ansan. He met with representatives from the Government at the national level, the judiciary, the prosecution services and the Korea Broadcasting Cooperation. Regrettably, the Special Rapporteur did not meet with any ministers, although he had requested meetings at that level.
3. In addition to meeting with representatives of Government and State institutions, the Special Rapporteur met with representatives of the National Human Rights Commission of Korea (NHRCK), United Nations agencies, non-governmental organizations, and community members and other groups and individuals working in the field of racism, as well as migrant workers and asylum seekers.
4. The Special Rapporteur wishes to express his sincere gratitude to the Government of the Republic of Korea for its cooperation in the conduct of the visit. He is grateful to the different State agencies for their cooperation. He is also indebted to the United Nations entities and to his interlocutors from civil society for the excellent cooperation they extended to him throughout the visit. He hopes his conclusions and recommendations will contribute to finding concrete ways and means of addressing the challenges raised in the present report in an effective and human rights-compliant manner.

II. General background

5. The Republic of Korea was proclaimed in August 1948, after the end of the Second World War, and peace agreements left the country divided from the Democratic People's Republic of Korea by drawing a line along the thirty-eighth parallel in the Korean peninsula. The country received United Nations support after it was invaded by the Democratic People's Republic of Korea two years later. The Korean War ended in 1953 without a peace agreement, leaving the Republic of Korea technically at war with the Democratic People's Republic of Korea for more than 50 years.
6. After a long period of authoritarian regimes, the country went through a democratization process in the late 1980s. At that time, the political situation was marked by significant, large-scale and occasionally violent pro-democracy protests that opposed the country's long-standing authoritarian rule. As a result of those protests, the authoritarian establishment saw its position weakened, and that weakness was seized upon by opposition leaders demanding democratic reforms. In June 1987, the ruling party's presidential candidate proposed a far-reaching democratization plan that accepted all the opposition's key demands. The Constitution was approved by popular referendum and formally adopted on 29 October 1987.
7. Since then, the Republic of Korea has been a key player in the region. It is a member of the Organization for Economic Cooperation and Development and the Group of 20. However, since the end of the Korean War in 1953, the strained relations with the Democratic People's Republic of Korea have played an important role in shaping the legal, political and institutional framework of the country. The Cheonan incident in 2010 and the nuclear test conducted by the Democratic People's Republic of Korea in early 2013 are examples of the latest tensions between the two neighbours. More recently, the tragic accident of the Sewol ferry, which led to the deaths of more than 300 persons, mostly high-

school students, led to political tensions between the Government and opposition political parties, as attempts to capitalize on the tragedy led to further polarization between the Government and the opposition.

8. Over the past 30 years, migration flows into the country have increased significantly. As at 1 January 2014, there were 1,569,470 foreign residents, including naturalized Koreans, who accounted for 3.1 per cent of the total registered population of 51,141,463. That means that 1 out of 32 persons is a foreign resident. The growing economic and social problems associated with an ageing population and a low birth rate may also present challenges to society. The birth rate is 1.19 children per woman of childbearing age and is well below the rate of replacement within the population. If those demographic trends continue, by 2060 there could be 80.6 elderly people for every 100 workers, which would present an enormous fiscal challenge to the Government.

III. Legal framework for combating racism

A. International human rights instruments

9. The Republic of Korea is party to the following core United Nations human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. However, it has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure or the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

10. Other international instruments ratified by the Republic of Korea include the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Discrimination in Education. The Republic of Korea has also ratified the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons.

B. Constitutional provisions

11. The Constitution of the Republic of Korea was adopted on 17 July 1948 and last revised on 29 October 1987, and is fundamental to the national system for promoting and protecting human rights. The Constitution has been amended nine times and almost fully rewritten five times (in 1960, 1962, 1972, 1980 and 1987).

12. The Constitution declares the Republic of Korea a democratic republic, its territory consisting of "the Korean Peninsula and its adjacent islands" and that the "Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the principles of freedom and democracy". The Constitution of the Republic of Korea guarantees human rights and stipulates the scope of the limitation of human rights and the obligation of the State to reaffirm and guarantee the inviolability of

human rights. The Constitution stipulates that basic freedoms and rights should not be undervalued simply on the grounds that they are not specified in the Constitution. The Bill of Rights is included in the second chapter of the Constitution. Individuals are not punished, placed under preventive restrictions or subjected to involuntary labour except as provided by law and through lawful procedure. Those detained or arrested must be informed of the reason and of their right to an attorney, and family members must be informed. Warrants must be issued by a judge "through due procedures" and accused persons may sue for wrongful arrest in certain cases.

13. The relevant provisions on non-discrimination are:

(a) Article 10: All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals;

(b) Article 11 (1): All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status;

(c) Article 14: All citizens shall enjoy freedom of residence and the right to move at will;

(d) Article 32 (4): Special protection shall be accorded to working women, and they shall not be subjected to unjust discrimination in terms of employment, wages and working conditions.

14. The Constitution assigns territorial ownership over the entire Korean peninsula, including the Democratic People's Republic of Korea. That provision, combined with the Nationality Act, grants refugees from the Democratic People's Republic of Korea automatic citizenship in the Republic of Korea upon defecting to the country.

C. Legislative framework prohibiting racism, racial discrimination, xenophobia and related intolerance

15. In the Republic of Korea, international human rights treaties duly concluded and promulgated under the Constitution are applicable in the domestic legal system. The entire spectrum of human rights is covered by a range of specific acts and laws. No provision of an individual law can infringe human rights beyond the limitations stipulated in the Constitution and, in the case of an infringement, the matter may be referred to the Constitutional Court for a review of the constitutionality of the provision.

16. In principle, the protection of human rights is ensured through criminal punishment and compensation for damages. Administrative measures that violate human rights can be declared null or cancelled through administrative appeals or administrative litigation. In the case that a violation of fundamental human rights due to the act or omission of public power is not redressed, even after all procedural remedies have been exhausted, a complaint can be filed before the Constitutional Court. Apart from judicial decisions, victims of human rights violations can petition NHRCK and seek remedies through the recommendations of that institution.

17. The Special Rapporteur was informed that there is no legal definition of "racial discrimination" under the country's law and that there were currently no specific legislative measures, including under the Criminal Code, to prohibit and punish racially motivated criminal offences. In 2012, the Committee on the Elimination of Racial Discrimination recommended that the Republic of Korea implement reforms in that area (see CERD/C/KOR/CO/15-16, paras. 6-8). In 2011, a comprehensive draft bill on equal

treatment and non-discrimination, developed in consultation with non-governmental organizations, was proposed by the previous legislature. The draft law was rejected by the National Assembly, however, in September 2012. Although several interlocutors, including parliamentarians, supported the adoption of such a comprehensive law, the Government informed the Special Rapporteur that the matter was not a subject for debate in parliament at the time of the visit. It also seems that popular support for such a reform is lacking.

18. While there is no general law on the prohibition of discrimination, there are a number of laws that prohibit discrimination in each respective area. Those laws vary in terms of anti-discrimination grounds and scope, and the level of protection and punishment. Such laws include the National Human Rights Commission Act, the Anti-Discrimination against and Remedies for Persons with Disabilities Act, the Act on Age Discrimination Prohibition in Employment and Aged Employment Promotion, the Labour Standards Act, the Equal Employment and Support for Work-Family Reconciliation Act, the Act on the Protection, etc., of Fixed-Term and Part-Time Employees and the Act on the Protection, etc., of Dispatched Workers.

19. The Special Rapporteur was also informed of the enactment of the comprehensive Refugee Act in 2012, which he considers a welcome development given the increasing number of requests for refugee status that the Republic of Korea receives. The Special Rapporteur was able to see first hand the efforts undertaken by the Government to process claims of refugees and asylum seekers in a fair, transparent and timely manner by visiting an immigration reception centre in Incheon. Although the percentage of claims that are accepted remains very low, revision and appeal procedures have been established to ensure a fair hearing and decision by the immigration authorities for those who arrive in the Republic of Korea and seek asylum.

IV. Institutional framework for combating racism

20. The Special Rapporteur was pleased to note that there are credible institutions engaged in the fight against racism and discrimination in the Republic of Korea. During his visit, the Special Rapporteur met with representatives of NHRCK, an independent institution which is mandated to play an important role in combating racism and racial discrimination. NHRCK was set up by an act of parliament in 2001 as a national advocacy institution for human rights protection. The Commission is composed of 11 commissioners: the chairperson, 3 standing commissioners and 7 non-standing commissioners. Of the 11 commissioners, 4 are elected by the National Assembly, 4 are nominated by the President of the Republic of Korea and 3 are nominated by the Chief Justice of the Supreme Court and then approved by the President.

21. NHRCK has a mandate to investigate the human rights violations perpetrated by central and local governments and to provide remedies to the victims. The Commission also has jurisdiction over discrimination committed by private entities and organizations on the basis of sex, religion, disability, age, social status, nationality, race, region of origin, appearance, marital status, pregnancy, family status, skin colour, ideas, political orientation, sexual orientation, medical history, etc. At the same time, the Commission has the authority to conduct investigations on its own initiative if there is a reason to believe that human rights violations or discrimination have occurred and that the cases are considered crucial for the promotion and protection of human rights. The Commission has a permanent secretariat that is divided into several branches, which include the Anti-Discrimination Division. The NHRCK vision is to create a society where the dignity and human rights of all persons, including foreigners living in the Republic of Korea, are fully respected and realized. To that end, NHRCK is committed to the full implementation of all human rights set forth in the Constitution, as well as international human rights standards at the domestic

level in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

22. The Special Rapporteur was informed that NHRCK only provides recommendations to the Government, which can decide whether to follow up or not. The Special Rapporteur also notes that the NHRCK personnel was reduced by 21 per cent a few years ago and that some experienced commissioners have resigned in recent years (see CERD/C/KOR/CO/15-16, para. 18).

23. The Special Rapporteur also met with representatives of the Korea Communications Commission, which has a mandate to oversee and evaluate the content of television and radio transmissions of both public and private operators. The Commission was established under the Act on the Establishment and Operation of Korea Communication Commission and is responsible for regulating broadcasting and communication services, protecting users and ensuring the independence of broadcasting services, including monitoring hate and racist speech. The functions of the Commission include the formulation and implementation of policies pertaining to terrestrial, general and reporting programme providers; the investigation of violations by a broadcasting or communication service operator and the imposition of sanctions for such violations; the development and implementation of measures aimed at protecting users and their personal information and at preventing the circulation of illegal or harmful information; the establishment of policies on programming and evaluation; and the diversification of media.

24. At the municipal level, the Special Rapporteur was made aware that Seoul city council had established in 2012 a human rights commission by issuing the Human Rights Ordinance. The commission is composed of 15 experts who are tasked with reviewing major policies and laws related to the human rights of the citizens of Seoul and three citizens' rights guardians appointed to receive reports of human rights violations in Seoul and to investigate them. Upon finding that a violation has occurred, recommendations can be made to the mayor on related policy change. The municipal human rights commission has competence over any alleged infringements by the city government, district offices and city-sponsored welfare facilities, and serves not just registered residents of the city, but anyone who officially has a workplace in Seoul. Petitions to the commission can be filed by victims and people who have knowledge of alleged violations. Because the commission was established only recently, it is as yet unclear what its precise impact will be and how it will avoid overlapping with the work of NHRCK.

V. Public policies to combat racism, racial discrimination, xenophobia and related intolerance

25. The Republic of Korea has had in place the National Action Plan for the Promotion and Protection of Human Rights since 2007, which includes provisions relating to racism, racial discrimination, xenophobia and related intolerance. The National Action Plan was renewed in 2012 and schedules a variety of tasks, including: the establishment and implementation of the second basic plan, for 2013–2017, under the Framework Act on Treatment of Foreigners Residing in the Republic of Korea; the provision of language support and counselling to foreign workers; the strengthening of health and safety management for foreign workers; the provision of medical services to irregular foreign workers and their children; the provision of assistance for the social integration of the families of married immigrants; the prevention of domestic and sexual violence against married female immigrants and the provision of relief to such victims; the provision of support to enable married female immigrants' to gain access to facilities for providing childcare and assistance to mothers; the protection and promotion of cultural diversity; the securing of a fair procedure for determining refugee status; the protection of the rights of

applicants for refugee recognition; the provision of social security services to recognized refugees; and education on human rights. The Ministry of Justice directs the establishment and implementation of the National Action Plan, and relevant ministries and organizations carry out the specific tasks laid out. Every year, information on the National Action Plan's implementation are reported to the National Human Rights Policy Council and made public.

26. The Government established the first Basic Plan for Policies on Foreigners (2008–2012) on 17 December 2008. The purpose of the Plan was not only to eliminate direct discrimination against immigrants as members of a social minority, but also to foster a mature multicultural society through support for immigrants' social adjustment and to promote the multicultural awareness of the public. The Plan sets out to strengthen support for immigrants in order to reduce indirect social discrimination due to their delayed social adjustment, and to standardize a variety of supporting policies through the introduction of a social integration programme.

27. The Multicultural Families Support Act was adopted on 21 March 2008 and enacted on 22 September of the same year. According to that law, the term "multicultural family" applies to families consisting of nationals of the Republic of Korea and immigrant spouses (including those who are naturalized after their marriage) and their children. The law requires the national and municipal governments to actively support such families in order for them to improve their quality of life and stability. More specifically, the law requires the Ministry of Gender Equality and Family to conduct a survey every three years, to stem discrimination and prejudice and to nurture a social background that recognizes the diversity of people, as well as to provide information and education support to such families. Those measures are based on the Framework Act on Treatment of Foreigners Residing in the Republic of Korea of 2007. In that connection, the Centre to Support Immigrant Spouses, established in 2006 by the Ministry of Gender Equality and Family, changed its name to the Multicultural Family Support Centre.

28. The Multicultural Families Support Act is relevant to racism and racial discrimination in relation to the family, as it was adopted to contribute to social integration and improve the stability and quality of life of immigrant spouses. The Act also enables multicultural families to receive the necessary information on and assistance with daily life, education support, protection and support for victims of domestic violence, medical/health-care support, childcare and education support for children and multilingual services through the Multicultural Family Support Centres. However, article 2 of the Act limits the definition of a multicultural family to a union between a citizen of the Republic of Korea and a foreigner (including naturalized citizens), thereby excluding a marriage where both partners are foreigners (as is the case with most migrants).

VI. Main challenges in the fight against racism, racial discrimination, xenophobia and related intolerance

A. Migrant workers using the Employment Permit System

29. The first attempt to regulate migrant workers was made in 1992 in order to respond to labour shortages and to reduce the number of undocumented migrants. The Industrial Trainee System was initially aimed at providing training to foreign workers recruited by domestic companies to improve their skills and enhance their performance. However, most of the jobs covered by the System were considered to be "dirty", "difficult" and "dangerous". Moreover, the number of undocumented migrant workers continued to surpass the number of documented industrial trainees, which led the Government to change

the system by adopting the Employment Permit System (EPS). EPS was introduced in July 2004 in the manufacturing, construction, agriculture and livestock industries and later expanded to the service and fishing industries in 2005 and 2006, respectively, at first through bilateral memorandums of understanding signed between the Republic of Korea and sending countries that set out the rights and duties of Governments and the status of and benefits for the workers.

30. The number of migrants in the Republic of Korea has since increased steadily and reached over 1.7 million in 2014. This increase is due in part to the introduction of the more flexible EPS. Most beneficiaries of EPS are from South-East Asian countries. The Special Rapporteur was informed that the System had allowed numerous foreign workers to come to the Republic of Korea and access employment opportunities, and had benefited the country's businesses, which could recruit foreign workers through a flexible permit system for short- and medium-term periods that has contributed to the economic growth witnessed in recent years.

31. The Special Rapporteur has nonetheless been made aware that the Government has introduced recent amendments to EPS, which in some cases require migrants to leave the country in order to be paid their severance settlement after finishing their employment contract in the Republic of Korea.

32. Although EPS recognizes migrant workers as workers under labour law, it places a number of restrictions on them, for example with regard to the number of times they can change workplace and employment and the maximum period of stay, denies them the right to family reunification and places extreme burdens on migrants seeking to change the type of visa. The Special Rapporteur is particularly concerned about several restrictions and requirements within the System that increase the likelihood of migrant workers being subjected to human and labour rights abuses by their employers, who can, for example, terminate a migrant's contract without having to justify the decision. Nonetheless, job centres do have direct authority to proceed with a change in the worker's employment without the employer's consent if the worker applies for a change of employment and if the reason for doing so does not originate with the employee. Such a change in employment would not be included in the total number of workplace changes permitted during the worker's employment in the Republic of Korea. Nevertheless, the inability to freely change employment can easily place migrant workers in situations of labour exploitation. In addition, a change in employment can jeopardize a migrant's chance of extending his or her initial contract in the Republic of Korea.

33. Further limitations contained in the System make it almost impossible for a migrant worker recruited under the scheme to be granted permanent or long-term residency, or even to convert to another type of visa, as EPS is limited to a maximum of 4 years and 10 months.

34. The Special Rapporteur notes that the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations, in its 2013 observation on the Convention concerning Discrimination in Respect of Employment and Education (No. 111),¹ and the Special Rapporteur on the human rights of migrants (A/HRC/4/24/Add.2) have pointed out the problems of those cases and recommended that the Government take legal measures for rectification of discrimination.

35. The Special Rapporteur has also been informed that migrant workers in the Republic of Korea also experience discrimination on the grounds of sex, race, colour and country of

¹ Available from www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100_P13100_COMMENT_ID_3150326

origin. Migrant workers hired through EPS, some of whom work in poor conditions, are vulnerable to physical violence, verbal abuse, unpaid wages and minimum wage violations. Migrant workers are currently not allowed to join an independent labour union. The case of a trade union formed nine years ago by some migrant workers remains pending before the Supreme Court of the Republic of Korea, which has yet to recognize that union as legal.

B. Workers in the agriculture sector

36. The Special Rapporteur was informed about the situation of migrant workers in the agriculture industry. Through first-hand meetings with migrant workers in this sector, he was made aware of the difficult working and living conditions they face, which include working in small farms, in isolated areas of the country, in the cold winter and in the hot summer, particularly in greenhouses.

37. Migrant workers in the agriculture and livestock industries of the Republic of Korea face worse conditions than those hired in the manufacturing, construction and service industries. The Special Rapporteur was informed that some of the articles of the Labour Standards Act do not apply to labourers in the agriculture and livestock industries, as article 63 of the Act specifically excludes those workers from protections relating to working hours, paid weekly rest days and daily breaks. Such exclusion is not only discriminatory but also disproportionately affects migrant workers in the agriculture sector.

38. Furthermore, these migrant workers are not entitled to receive overtime pay or additional pay for any night or holiday work. Low-wage work and long hours are customary for labourers in the agriculture and livestock industries. In its 2013 fact-finding report on the human rights situation of migrant workers in the agricultural and stockbreeding industries,² NHRCK states that migrant workers in those industries worked an average of 284 hours, with just two days' rest every month, and received an average monthly wage of 1,270,000 won, which is below the minimum hourly wage and would equate to a monthly salary of 1,380,000 won.

39. In addition, such migrant workers are often assigned tasks that are much more difficult and strenuous than those assigned to their counterparts from the Republic of Korea. Given their isolation, it is particularly difficult for migrant workers to report violations of the Labour Standards Act and to change employment, as they have to go through the job centres and provide justification in order to be allowed to change employer. The Special Rapporteur was informed that migrant workers in the agriculture and livestock industries could transfer only to the construction, fishing or service industries.

40. Furthermore, since most migrant workers work in conservative, rural communities, they are especially vulnerable to discrimination. Migrant workers in the agriculture and livestock industries work and live in closed and isolated rural communities that consist mainly of farm owners and their families. As such, they are vulnerable to various forms of discrimination resulting from old-fashioned employment practices, disrespect for foreigners and limited-duration visa status given their short-term contracts as labourers. The Special Rapporteur was also informed that, in some rural communities, labourers have traditionally been regarded as servants, a perception that can lead to verbal abuse, physical violence, sexual abuse and violation of their privacy, as they live in their employer's household.

² Available from www.humanrights.go.kr/common/board/fildn_new.jsp?fn=ln_BB2013103111262611332591.pdf (Korean only).

41. With poor communication skills in Korean and the inability to improve their language skills owing to their long working hours and the geographical isolation from urban areas and the prejudice and disrespect shown towards workers in the agriculture and livestock industries, migrant workers in these sectors are particularly vulnerable to exploitation and discrimination. Moreover, with no labour union on their side, they face threats of dismissal and expulsion if they challenge their employer.

C. Foreign seafarers on the high seas

42. The Special Rapporteur was informed that the number of migrant workers on fishing vessels registered in the Republic of Korea has been rapidly increasing and that the country's fishing industry is now much more dependent on migrant workers than any other industry. According to government statistics, as of December 2013, about 70 per cent of seafarers in deep-sea fishing vessels and 28 per cent of seafarers in offshore fishing vessels were foreign workers.

43. In meetings in Busan, foreign seafarers informed the Special Rapporteur of their difficult working conditions on board the fishing vessels. Foreign seafarers are often assigned the most difficult tasks and paid less than their counterparts from the Republic of Korea. In addition, they are not entitled to a share of the catch, which is a requisite for seafarers from the Republic of Korea. While the wage of seafarers from the Republic of Korea is composed of a monthly fixed wage and a share of the catch, which is usually worth much more than the wage, foreign seafarers are paid only a monthly minimum wage without any share of their catch. Since the minimum wage is determined per month regardless of their working hours, foreign seafarers receive only that fixed minimum wage, even though they work 24 hours a day.

44. Although seafarers are entitled to a minimum wage under the Seafarers Act, which states that the minimum wage for seafarers should be determined by a collective agreement between the federation of seafarers' unions and the federation of vessel owners' associations, those unions do not accept foreign seafarers as members, although they are still authorized to represent them in collective bargaining. The Special Rapporteur was informed that, on average, seafarers from the Republic of Korea were paid three times more than their foreign counterparts. In addition, foreign seafarers working on vessels registered in the Republic of Korea are not regulated by the Labour Standards Acts, nor are they covered under the rules of EPS. Once fishing vessels carrying foreign seafarers set sail, they stay on the high seas for periods of up to one month, which makes it very difficult for those seafarers to report abuse. The Special Rapporteur was informed that no limit is imposed on the number of applications those seafarers could submit to the Immigration Office to change their employer.

45. Moreover, the Special Rapporteur was informed that foreign seafarers are allegedly often subjected to racist and xenophobic verbal and physical abuse by ship owners and captains, as well as by fellow seafarers from the Republic of Korea. However, they are not able to walk off the vessel because their employer usually holds a deposit, such as a large sum of money or a land certificate, as security supplied by their employment agency in their home country. Although the Immigration Act specifically prohibits the withholding of a foreigner's passport or Alien Registration Card as a means to ensure a contract for his or her employment or the payment of the debt, some vessel owners or management agencies appear to confiscate the passports, identification documents or even bankbooks of foreign seafarers in order to prevent them running away.

46. Finally, foreign seafarers face difficulty in reporting abuse to the maritime police or visiting a local maritime affairs or port owing to the language barrier or the distance of working location. There have been reports that when foreign seafarers have contacted a

person in their management agency who can speak their language, this person did not report problems to the authorities but took sides with the vessel owner. In port cities, local authorities often have a close relationship with vessel owners, which results in foreign seafarers who report abuse being penalized by the authorities.

D. Marriage migrants

47. Men from the Republic of Korea began to marry foreign women in the 1990s and the phenomenon has rapidly increased since 2000, when commercialized marriage brokers were first allowed to facilitate this new type of marriage. These brokers would recruit men from the Republic of Korea who would visit other Asian countries to meet potential brides. Within two weeks, they would meet women and get married to the woman they chose. The men would be liable for all or the majority of the costs of the process. It is estimated that around 20,000 couples get married every year as part of these arrangements; approximately around 1 out of 10 marriages concluded in the Republic of Korea.

48. The Special Rapporteur was informed of the numerous efforts made by the Government to support multicultural families and, in particular, the comprehensive assistance for integrating marriage migrants (persons who migrate to the Republic of Korea by marrying a national of that country) and their children as full members of society. Numerous services for multicultural families have been made available, such as the multicultural families support centres throughout the country, which offer language classes and counselling to both spouses and help marriage migrants and their children to settle and integrate into society. However, the policy for multicultural families is in the vast majority of cases applied to foreign women who marry men from the Republic of Korea and not vice versa. The legal definition of these marriages does not extend to the marriage of two migrant workers.

49. Moreover, the Multicultural Families Support Act narrowly defines the multicultural family as: (a) a family composed of a marriage migrant and a citizen of the Republic of Korea who acquired citizenship at birth; and (b) a family composed of a naturalized citizen and a citizen of the Republic of Korea who acquired citizenship at birth. It does not include in its definition other types of migrant families, such as the families of migrant workers or ethnic Korean families from China, the Democratic People's Republic of Korea and Central Asian countries.

50. The Special Rapporteur has also been informed that, since 2011, men from the Republic of Korea who plan to marry a foreign spouse from certain countries are required to attend an international marriage orientation programme. The Minister of Justice announced the countries concerned as Cambodia, China, Mongolia, the Philippines, Thailand, Uzbekistan and Viet Nam. According to the Ministry of Justice, those countries were targeted because the statistics showed a higher rate of divorce and naturalization in a marriage when one spouse was from one of those countries. Thus, immigrants from those countries are allowed to apply for a marriage visa only when their spouses from the Republic of Korea take the international marriage orientation programme.

51. Similarly, the concept of multicultural families as currently interpreted and applied has some limitations and has been used in the media to convey negative connotations of marriage migrants and foreign workers from South-East Asia.

52. The Special Rapporteur was informed that, on 5 April 2011, the Government had added article 25-2 to the Immigration Act. In accordance with that article, relating to special rules applicable to marriage migrants, marriage migrants who are allegedly abused by their spouses from the Republic of Korea may be granted an extension of stay until a remedy process, including a pending court trial, an investigation by law enforcement

agencies or an administrative remedy under applicable laws and regulations, is completed. Even after the previously extended stay, such marriage migrants may be permitted a further extension if deemed necessary for their recovery. In addition, the Special Rapporteur was informed that marriage migrants may be permitted to remain in the Republic of Korea even after separation or divorce, if they are raising an underage child or are not found to be responsible for the termination of marriage (in cases where the spouse from the Republic of Korea is missing or dead, or at fault for the divorce).

E. Private acts of racism and xenophobia

53. The Special Rapporteur, while noting that he had not been informed of or seen any racist or xenophobic discourse or practice at the institutional level, was nevertheless made aware of several incidents of private acts of racism, racial discrimination and xenophobia. The incidents included a naturalized woman being refused entry to a public bath by the bath's management, taxi drivers turning customers who do not look ethnic Korean in to the police and shop attendants expressing derogatory attitudes to foreign customers. Although these may be isolated incidents, it is essential for the Government to address the issue of racism and xenophobia through better education and awareness-raising.

54. The Special Rapporteur would like to highlight the role that education plays in combating racism and xenophobia and recall his report on the role of education to prevent racism, racial discrimination, xenophobia and related intolerance (A/HRC/23/56), in which he stressed the fundamental role of education in the effective enjoyment of all other human rights, as education is known to act as a multiplier in enhancing the other human rights and freedoms. The role of teachers and educators is particularly important and they should be given specialized training, including in the prevention of racism, xenophobia and other forms of discrimination, with special emphasis on the situation of migrants, refugees and asylum seekers or other vulnerable groups. Similarly, human rights education and anti-discrimination training should also be emphasized in schools and universities. Teachers, journalists, state officials, civil servants, judges and law enforcement officials should be given such training, and particular emphasis in the curriculum should be given to international norms prohibiting racism and racial discrimination.

55. The Special Rapporteur was informed of the existence of nationalist groups and movements that openly advocate the abolition of the policy of providing support to multicultural families, claiming that the policy enacted by the Government discriminates against citizens, as they are not entitled to similar social benefits or programmes. The Special Rapporteur expresses concerns about the dissemination of inaccurate information by those groups and movements, as he was assured that the same social benefits are offered to citizens under the regular social protection scheme. It is important for the Government to dispel such myths and clarify the situation in order to prevent the proliferation of racist and xenophobic movements, as the country's society has become more exposed to foreign nationals and migrant workers.

F. Racism in the media

56. The Special Rapporteur notes that, in the society of the Republic of Korea, the media (written, broadcasted and online) are accessible, independent and offer vibrant coverage of news and issues. He recalls that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in the report on his visit to the country, commended the existence of media pluralism and praised some of the results achieved, which had resulted in one of the highest rates of broadband Internet penetration in the world (see A/HRC/17/27/Add.2 and Corr.1, paras. 87 and 101).

57. The accessibility of the mass media in everyday life has had an effect on the awareness and value judgement of the country's citizens. In addition, the high levels of Internet penetration and usage mean that media reports, television programmes and films are easily accessible through tablets and smartphones. That can lead to stories covered in the media sometimes being disseminated without their authenticity being verified, and that does irreparable damage and harm, even when corrections are made afterwards.

58. The Special Rapporteur also recalls that, in its 2012 concluding observations, the Committee on the Elimination of Racial Discrimination noted the following with regard to the Republic of Korea (see CERD/C/KOR/CO/15-16, para. 10):

Racist hate speech directed against non-citizens is becoming more widespread and explicit in the media and on the Internet. The Committee notes that the fundamental right to freedom of expression of the individuals involved does not protect the dissemination of ideas of racial superiority or incitement to racial hatred ... The Committee recommends that the State party monitor the media, Internet and social network to identify those individuals or groups who disseminate ideas based on racial superiority or incite to racial hatred against foreigners [and] that the State party prosecute and adequately punish the authors of such acts.

59. The Special Rapporteur was made aware during his encounters with relevant stakeholders of the significance of the term "multicultural", which in the society of the Republic of Korea is now a reference to a specific group of persons and is used to refer sometimes in a derogatory manner by the media to migrant men from Asia (originally migrant workers) and marriage migrant women (generally having married through religious groups or marriage brokers), and is quite different from its legal definition in the Multicultural Families Support Act, where it refers to families whose members are migrants married to citizens and children who were born to them or adopted.

60. The broadcasting industry has begun showing "multicultural" programmes in response to the increase in the number of multicultural families, such as the television programme "Love in Asia" (from KBS), the longest-running multicultural programme, and the Multicultural Hope Project (from MBC). Although those programmes show model multicultural families and how well they have adapted to the country's society, other television programmes display multiculturalism in a derogatory and condescending manner and contribute to reinforcing stereotypes of and prejudice against multicultural families. As the perception of foreigners and migrants is largely derived from the media, these messages, either positive or negative, have a powerful impact on the collective consciousness. Similarly, advertisements broadcast on television have, on occasion, reinforced negative perceptions of foreigners, migrants and families with a multicultural background.

61. The Special Rapporteur was informed that, in 2013, NHRCK made recommendations to four public television broadcasting companies, including public channels, and four general programming cable channels to ensure that discriminatory expressions towards migrants and foreigners were not broadcast on television and that specific measures to prevent further occurrences were taken. NHRCK also called on the Korea Communication Standards Commission, when reviewing television programmes, to check for such content, in particular racial stereotypes, manifestations of prejudice and the use of discriminatory language towards migrants and foreigners, in accordance with article 6 of the Broadcasting Act and articles 29 and 312 of the broadcasting deliberation regulations, which provide criteria for assessing whether any content can be qualified as racial prejudice or xenophobia, religious prejudice or cultural, religious or ethnic intolerance.

62. The Special Rapporteur welcomes the recommendations of NHRCK and hopes that broadcasting companies, in particular television stations, will follow suit by setting out clear guidelines for the prevention of racism and xenophobia in their programmes.

VII. Conclusions and recommendations

63. The Special Rapporteur thanks the Government for its cooperation before and during the visit, which allowed him to meet interlocutors from all relevant ministries, the judiciary and NHRCK. He is also extremely grateful to the United Nations agencies present in the country, non-governmental organizations, community members and other groups and individuals working against racism and xenophobia, as well as individual migrant workers and asylum seekers with whom he met and who have been very helpful in explaining the issues at stake.

64. The Republic of Korea has undergone dramatic changes over the past decades, including significant positive developments in the area of human rights, reflected in the well-respected National Human Rights Commission and the vibrant civil society, which play a fundamental role in safeguarding the progress made. Similarly, the Republic of Korea has made important progress in addressing the issue of racism and xenophobia, considering its long history of ethnic and cultural homogeneity. Only recently, as the country has consolidated its rapid economic development and industrialization, has it been faced with the progressive arrival of foreigners and migrant workers and started to open up to multiculturalism and cultural diversity. These developments have provoked an important and essential debate on multiculturalism, racism and xenophobia in the country.

65. It is therefore important that the numerous efforts undertaken by all stakeholders, including the Government of the Republic of Korea, to combat racism, xenophobia and other forms of discrimination continue, especially at times of economic slowdown, when the temptation to divert energy and resources to other issues is strong.

66. In that connection and in a spirit of constructive dialogue with the authorities and other stakeholders, the Special Rapporteur wishes to make the recommendations below to the Government of the Republic of Korea.

On the legal framework

67. The Special Rapporteur recommends that the Government:

(a) Expedite the ratification of United Nations treaties that it has not yet ratified, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, recalling the previous recommendations made by the Special Rapporteur on the human rights of migrants, the concluding observations of the Committee on the Elimination of Racial Discrimination and the recommendations of the Special Rapporteur on the situation of human rights defenders;

(b) Ratify the following fundamental International Labour Organization conventions: Forced Labour, 1930 (No. 29), Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), Right to Organise and Collective Bargaining, 1949 (No. 98), Abolition of Forced Labour, 1957 (No. 105), Labour Inspection (Agriculture), 1969 (No. 129), Migration for Employment (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions), 1975 (No. 143);

(c) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which it signed in 2000;

(d) Take action on the finalization and adoption of the comprehensive law to prohibit all forms of discrimination or another such comprehensive law prohibiting racial discrimination;

(e) Amend the Criminal Code and other relevant penal laws in order to include racial discrimination as a criminal offence and adopt the legislation necessary to criminalize racial discrimination, provide for adequate sentences to the gravity of the offence and make racial discrimination an aggravating circumstance when another offence is committed, and provide for appropriate reparations to the victims.

On the institutional framework

68. The Special Rapporteur recommends that the Government strengthen its cooperation with NHRCK in ensuring its full independence and effectiveness and its autonomy to manage its resources and select its own staff, in order to allow it to play a more significant role in receiving complaints from victims of racism and xenophobia, conduct investigations and issue relevant recommendations to the Government, which could be followed up in a similar manner as has been done recently with the adoption of comprehensive laws prohibiting discrimination against women and persons with disabilities.

On migrant workers

69. The Special Rapporteur recommends that the Government make the necessary amendments to EPS, in particular with regard to: the complexity and variety of types of visa; discrimination based on the country of origin; limitations on migrant workers' ability to change employment; and the maximum period of stay allowed. In particular, he recommends removing the restrictions on the number of job changes allowed to EPS workers, allowing all EPS workers to change employment without a release form from their employer and ensuring that the rights covered under the Labour Standards Act are extended to all workers, including migrant workers, irrespective of which sector they work in, in particular with respect to work hours, daily breaks and weekly paid rest days.

70. For migrant workers in the agriculture sector, the Special Rapporteur recommends that the Government: ensure that all are paid the full overtime rate for any work performed outside the regulated hours, as set out in article 56 of the Labour Standards Act; clarify what constitutes adequate food and accommodation when those are included as part of a migrant worker's contract; ensure that the Ministry of Employment and Labour regularly inspects all farms to ensure the proper implementation of the Labour Standards Act and EPS contracts; and take appropriate action to remedy the situation, including appropriate sanctions against employers who are in breach of their obligations.

71. In relation to foreign seafarers working on vessels registered in the Republic of Korea, the Special Rapporteur recommends that the Government sanction the discriminatory application of minimum wages between seafarers from the Republic of Korea and foreign seafarers on such vessels on the high seas; enable foreign seafarers to also benefit from a share of the catch; eradicate the practice of employers deliberately retaining identification documents and bankbooks of foreign seafarers; train employers and fishermen of the Republic of Korea on practical measures to eradicate verbal and physical abuse towards foreign fishermen; ensure proper

inspection by officials of the Ministry of Fisheries and Oceans of vessels on which foreign seafarers are employed; establish a reporting mechanism for foreign seafarers to register violations and abuse by their employer and co-workers from the Republic of Korea, accessible in their languages; and take rapid action, including appropriate sanctions when such violations are found.

On marriage migrants and multicultural families

72. The Special Rapporteur recommends that the Government grant equal rights, in the case of separation or divorce, to migrant women married to men who are nationals of the Republic of Korea, including with regard to stability of residency, notwithstanding the outcome or duration of the marriage and whether or not any children were born from the union. The Special Rapporteur also recommends that the Government work towards ending the practice of requiring men who are nationals of the Republic of Korea and who wish to marry women from certain countries to undergo the international marriage orientation programme; ensure that international marriage agencies whose staff exhibit racism and sexism are properly sanctioned; and conduct a wide-ranging public awareness campaign to end racism and xenophobia concerning international marriages, including redefining the concept of multicultural families and recognizing the benefits they bring to society.

73. The Special Rapporteur also recommends that the Government ensure that foreign women who are victims of domestic violence, sexual abuse, trafficking or other forms of violence be informed of their rights and given proper access to justice. Women victims of violence should be given the right to legally remain in the country if they so wish.

74. The Special Rapporteur also recommends that the Government broaden the definition of multicultural families to include unions between foreigners or inter-ethnic unions in order to integrate those who are presently excluded from the social benefits provided for under the Multicultural Families Support Act.

75. The Special Rapporteur also recommends that the authorities revise the school curriculum in order to raise awareness and promote acceptance of multiculturalism and the contribution of migrants to society from an early age. The Special Rapporteur recalls that education is fundamental in combating racism, racial discrimination, xenophobia and related intolerance and in promoting the principles of tolerance and respect to ethnic, religious and cultural diversity.

On racism and xenophobic discourse promoted by private actors

76. The Special Rapporteur calls upon the Government to strengthen mechanisms for preventing and eliminating xenophobic discourse against foreigners, migrants and multicultural families, including among politicians and political leaders. That phenomenon should be tackled at all levels, including at the national, regional and local levels. The Special Rapporteur recalls that leaders have a responsibility to strongly denounce such discourse, including when it comes from within their own ranks. In particular, politicians from mainstream political parties should avoid xenophobic discourse and the scapegoating of foreigners, migrant workers and multicultural families, and promptly denounce false allegations, especially those concerning social benefits and programmes supporting the integration of migrants and multicultural families and children. The Special Rapporteur also recommends collecting disaggregated data and statistics on the number of cases of racism and xenophobia reported to the authorities, including the percentage of investigations and prosecutions undertaken following such complaints and their outcome.

On racism in the media

77. The Special Rapporteur recalls the fundamental role played by the media in promoting diversity and shaping opinions and attitudes. In that regard, the positive role and influence of the media should be used to promote tolerance and respect for diversity. The Special Rapporteur encourages a diversity of voices in the media, which can be done by providing incentives and support to community media and visibility and voices to victims of racism and xenophobia. He also recommends that the media develop and implement voluntary ethical codes of conduct and self-regulatory measures, policies and practices to combat racism and xenophobia.

78. The Special Rapporteur also encourages the Government to take stricter measures to prevent and eliminate hate speech and xenophobia on the Internet and to combat impunity for such acts. In that regard, he recommends the prompt prosecution of perpetrators and appropriate sanctioning where relevant.

On refugees, asylum seekers and stateless persons

79. The Special Rapporteur welcomes the enactment of a comprehensive Refugee Act in 2012, and recommends that the relevant authorities process asylum claims within a shorter time frame. He also recommends that the Government ensure free legal aid to asylum seekers, and adequate training on human rights and asylum procedures for law enforcement agents. The Special Rapporteur also recommends the adoption of a gender perspective in the treatment of asylum requests filed by women and the implementation of gender-based measures, such as providing same-sex interviewers and interpreters. The Special Rapporteur proposes facilitation of access to asylum procedures for women victims or potential victims of trafficking in line with guideline No. 7 of the Guidelines on International Protection of the Office of the United Nations High Commissioner for Refugees on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked.

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Agenda item 9

**Racism, racial discrimination, xenophobia
and related forms of intolerance: follow-up to
and implementation of the Durban Declaration
and Programme of Action**

**Report of the Special Rapporteur on contemporary forms
of racism, racial discrimination, xenophobia and related
intolerance on the implementation of General Assembly
resolution 69/160**

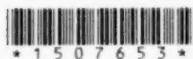
Summary

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance submits the present report pursuant to General Assembly resolution 69/160 on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. In paragraph 43 of that resolution, the Assembly requested the Special Rapporteur to prepare for submission to the Human Rights Council at its twenty-ninth session, a report on the implementation of the resolution, based on the views of Governments and non-governmental organizations, gathered in accordance with the request made by the Commission on Human Rights in its resolution 2005/5.

The present report addresses developments identified by the Special Rapporteur with regard to the human rights and democratic challenges that extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements, continue to pose.

In that context, the Special Rapporteur examines the main areas of concern in which further efforts and constant vigilance are required, including with regard to the protection of vulnerable groups of individuals against racist and xenophobic crimes and the promotion and consolidation of democracy and human rights in general. He also identifies good practices developed by States and various stakeholders.

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The present report includes the recommendations made on the issue by the Special Rapporteur in his previous reports to the General Assembly (A/69/334) and the Human Rights Council (A/HRC/26/50 and A/HRC/23/24) as they remain applicable and valid, despite efforts made to address the problem of glorification of Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Those recommendations are clustered at the end of the report by sectors for easy reference.

The Special Rapporteur is of the view that the current requirement to report twice per year on this specific issue is not an optimal mechanism for fulfilling the obligations of his mandate as set out in General Assembly resolution 69/160 and, considering that there have been no major developments since the presentation of his last report on the issue to the General Assembly and to the Human Rights Council, he is of the view that those obligations would be best served by the submission of a single report annually to the Assembly. The Special Rapporteur believes that other streams of his work could be used to address this important issue in a concrete way, which could allow for more in-depth dialogue and engagement with Governments, non-governmental organizations and relevant actors, thus enabling them to work in a concerted fashion towards the implementation of both existing and future recommendations.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 69/160, paragraph 43, in which the Assembly requested the Special Rapporteur to prepare, for submission to the Human Rights Council at its twenty-ninth session, a report on the implementation of that resolution on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance, based on the views of Governments and non-governmental organizations.

2. In paragraph 41 of General Assembly resolution 69/160, the Assembly recalled the request of the Commission of Human Rights, in its resolution 2005/5, that the Special Rapporteur continue to reflect on that issue, make relevant recommendations in his future reports and seek and take into account in that regard the views of Governments and non-governmental organizations. Furthermore, in accordance with paragraph 43 of Assembly resolution 69/160, the Special Rapporteur will be submitting a similar report to the Assembly at its seventieth session.

3. In section II of the present report, the Special Rapporteur addresses the human rights and democratic challenges posed by extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements, in the context of the current economic crisis. In section III, he examines cyber racism and hate propaganda disseminated in social media by extremist political parties, movements and groups. Section IV concerns extremism in sports. Section V is dedicated to countering Holocaust denial and the distortion of history. The Special Rapporteur identifies good practices developed by States and different stakeholders in section VI, and section VII contains his conclusions and recommendations.

II. Information received relating to the existence of extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements

4. In the present section, the Special Rapporteur focuses on information received relating to the existence of extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements. The challenges concern (a) the protection and consolidation of human rights in a democratic context; (b) protecting victims and vulnerable groups against racist and xenophobic crimes.

A. Protecting and consolidating democracy and human rights

5. During the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, and in the subsequent Durban Declaration and Programme of Action, States recognized that political manifestos and organizations based on racism, xenophobia or doctrines of racial superiority and related discrimination were irreconcilable with principles of democracy and good governance.

6. As noted in his thematic reports to the Human Rights Council (A/HRC/26/50 and A/HRC/23/24), the Special Rapporteur has received information that extremist political parties, movements and groups have continued to gain influence in several countries and regions. Throughout Europe in particular, there has been an increase in the number of local and regional parliamentary seats occupied by representatives of extremist political parties.

A number of far-right political parties have also gained ground in local parliamentary elections, as well as in the European Parliament.

7. The Special Rapporteur is concerned that, in some countries, some mainstream political parties continue to form coalitions with extremist political parties. He emphasizes the need for all democratic political parties to base their programmes and activities on respect for human rights and freedoms, democracy and the rule of law and to condemn political messaging that has the objective of fuelling racist, xenophobic, discriminatory or intolerant ideas.

8. Stigmatization and targeting of vulnerable groups during sustained periods of austerity in some countries continue and with them the increasing tendency of political leaders to blame certain groups for high unemployment rates, cuts in social benefits and increasing poverty. Extremist political parties place the burden of the negative consequences of such crises on foreigners, migrants (including irregular migrants), minority groups, refugees and asylum seekers. Those groups are often perceived as a threat to the standard of living of the general population in those countries. According to information received, individuals from the Muslim and Jewish faiths, as well as those from the Roma communities, have been singled out and stigmatized and, in some cases, have been at the receiving end of intolerance and violence, incited by political leaders. As stated in his thematic report (A/HRC/26/50), political leaders should take all the necessary measures to deal adequately with social and economic issues, especially during periods of economic recession, and not use extremist rhetoric, particularly during electoral campaigns, in order to secure re-election.

9. The Special Rapporteur is reassured, however, by reports from some Eastern European countries that politicians from the same party or coalitions have spoken out against such populist language targeting vulnerable groups. It is essential that mainstream political parties and politicians, including high-level political leaders, clearly and unequivocally condemn expressions of racism, xenophobia and related intolerance. He encourages politicians and political parties to break away from the continuing rhetoric which seeks to inflame tensions rather than build mutual understanding and respect. Echoing the views expressed in his above-mentioned thematic report, he again stresses the importance of addressing such discourse when it arises from within the parties' own ranks.

B. Protecting victims and vulnerable groups against racist and xenophobic crimes

10. The Special Rapporteur has received reports that incidents of racist and xenophobic violence continue to be perpetrated by extremist movements and groups, including neo-Nazis, skinheads and other right-wing movements, against Roma, Muslims, Jews and non-traditional religious groups and their places of worship. As previously noted in his reports (A/HRC/23/24 and A/HRC/26/50), he continues to be concerned about reports of incidents of harassment and violence against persons of African descent. He is also concerned by information regarding violence against migrants and foreigners, committed by individuals closely linked to far-right nationalist parties, including arson attacks on houses, vandalization of schools and places of worship as well as cases of stabbing of migrants and asylum seekers in the street. Information has further been received regarding threats against Muslim women wearing headscarves, and physical attacks on imams at mosques. There have been reports of Jewish schools being painted with swastikas and slogans against Jews. Jewish cemeteries have been desecrated and gravestones broken and painted with swastikas. He is also concerned at reports of attacks on civil society organizations working on anti-racism issues.

11. Hate speech targeting refugees in particular has resulted in actual violence against that group as well as persons perceived to belong to it. As noted in the report of the Special Rapporteur to the General Assembly (A/69/334), racial discrimination and related intolerance are common reasons for persons to flee their countries and can also threaten the protection of asylum seekers and refugees at the different stages of the displacement cycle. In Southern Africa, foreign nationals are increasingly viewed as competitors for scarce economic opportunities, which can fuel xenophobia and have a negative impact on the protection environment for refugees and asylum seekers in the region. Furthermore, as explained in the above-mentioned report, the lack of legal and normative frameworks relating to international protection in Asia and the Pacific region compromises the rights afforded to displaced persons who may be in need of international protection as a result of ethnic, racial or xenophobic persecution in their country of origin. Ensuring that humanitarian responses are not hampered by the focus on migration policy and border protection remains a challenge.

12. As previously illustrated (A/HRC/23/24), the Special Rapporteur has received further information regarding cases of extremism in police forces. In some countries, members of the police force openly propagate far-right, nationalistic and xenophobic ideas and discourse in their official capacity as guardians of public order and civil servants of the State. He is particularly concerned at reports from Eastern Europe that police officers are sometimes reluctant to intervene to stop harassment, verbal abuse and violent attacks and/or receive complaints from victims of racist and xenophobic crimes, particularly migrants and those from minority groups, and to investigate those incidents. That not only makes victims more reluctant to report racist or xenophobic acts, especially if they have irregular residence status in a particular country, but also creates a climate of impunity for extremist and vigilante groups. The Special Rapporteur is also concerned at allegations of increasing police involvement in crimes of sexual and gender-based violence against women of African descent and women from ethnic minorities, which often go unreported or are not thoroughly investigated.

13. The Special Rapporteur has received reports of attacks by individuals and groups linked to far-right and neo-Nazi groups on homosexual and bisexual men, and lesbian and transgender women. The same groups that attack, discriminate and promote discrimination against racial minorities are also involved in attacks against individuals on the basis of their sexual identity.

14. In the opinion of the Special Rapporteur, the identity of an individual is made up of multiple components, including gender, age, nationality, profession, sexual orientation, political opinion, religious affiliation and social origin; therefore, tolerance, mutual understanding and respect for all, without prejudice, stereotyping or discrimination, should be the basis of human relations of any kind. He also notes the underreporting of that type of violence and urges States to take the necessary measures to address the multiple and often interlinked forms of discrimination faced by individuals on the basis of their race, colour, descent, national or ethnic origin or sexual orientation.

15. The impact of racist and xenophobic ideas and values on some of the most vulnerable groups who have been most affected by the financial and economic crisis, such as young people, the elderly and impoverished citizens, is also of concern to the Special Rapporteur. Those groups are likely to feel the full negative effects of high unemployment and cuts in social services. In countries and regions such as Eastern and Southern Europe, which have been hardest hit by austerity measures, those persons often do not see a future for themselves or opportunities for improvement. Extremist ideologies can thus grow easily in such a climate of discontent. The Special Rapporteur recalls the view he set out in a previous report (A/HRC/23/24) that education is important and it is the responsibility of the State to counter the dissemination of ideas based on racial superiority or hatred and to

promote the values of non-discrimination, equality, diversity, democracy and respect for all. He recognizes, nonetheless, the important role of parents and family in helping to foster a culture of tolerance and respect.

16. The Special Rapporteur is concerned about ongoing reports that victims are reluctant to come forward and report incidents to the appropriate authorities for fear of reprisals, fear of prosecution, especially if their residence status is precarious or irregular, a belief that police will not investigate, a lack of trust in the criminal justice system in addition to language barriers and ignorance of their rights. The Special Rapporteur urges States to take further measures to better engage with victims so as to reduce fears, create a sense of trust between victims, police and prosecution and promote the reporting of such crimes. Similarly, he encourages the provision of training for law enforcement officers and members of the judiciary in order that they may properly address racist and xenophobic crimes in an effective, appropriate manner, one that is compatible with international human rights standards.

17. The Special Rapporteur takes this opportunity to reiterate the concerns set out in his previous report (A/HRC/23/24) that many racist crimes go underreported, thus potentially underestimating the scope and nature of the problem. The lack of accurate and current ethnically disaggregated data, which include sex-disaggregated data, particularly in the case of irregular migrants and asylum seekers, may give the impression that racist crimes by extremist political parties, movements and groups do not exist, or are less prevalent than in reality. Some national action plans lack mechanisms and sufficient financial support for collecting and disseminating disaggregated data. Collection of such data is critical, as it can help inform policy decisions on combating those crimes. The Special Rapporteur is of the opinion that both States and civil society should establish detailed systems for recording, reporting and monitoring such incidents and for encouraging victims to report them.

III. Cyberracism and hate propaganda disseminated in social media by extremist political parties, movements and groups¹

18. According to information received, racist and intolerant hate speech in political discourse is escalating, in particular against refugees and asylum seekers. In the media, on the Internet and in social networks, expressions of racism and xenophobia against foreigners and ethnic minorities have become commonplace, as has abusive language, when referring, for example, to the Roma. In Eastern Europe, the Special Rapporteur has received reports of an open anti-Roma campaign waged by the media in one country where Roma are presented as a demographic threat. According to reports, there is a worrying tolerance of such practices on the part of the public.

19. The Special Rapporteur notes with regret that very few cases of hate speech have been dealt with by justice systems and also that the conviction rate is so low. In one Eastern European country in 2014, out of a total of 56 pretrial proceedings which were initiated under the crime of preaching hatred on religious grounds, not one resulted in a conviction. The trend appears to be that criminal law provisions in force to combat hate speech are rarely invoked and hardly ever successfully. That sets a dangerous precedent implying that hate speech is not a serious offence and can be used with impunity. Although the Special Rapporteur welcomes the response of some high-level public figures who have issued declarations condemning such acts and appealing for solidarity, he notes that some attempts

¹ See also the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Human Rights Council (A/HRC/26/49).

to ban extremist political parties for incitement to ethnic and religiously motivated hatred have not succeeded.

20. New technologies such as the Internet and social media have developed rapidly, but they are unfortunately increasingly used as instruments for the dissemination of racist ideas and hate speech under the supposed anonymity provided by online forums. As noted in his previous report (A/HRC/26/50), the Special Rapporteur is concerned that some extremist groups may have moved their activities to the Internet and social media networks in order to spread their ideas and propaganda with relative impunity.

21. According to information received, extremist movements and groups are actively present on the Internet and social media networks and publish material on their websites or on those of sympathetic organizations, which promote and incite racial discrimination and violence. Not only do those websites and social media networks serve as avenues to spread hate speech and incite racial violence and abuse against specific groups, they are also a means of expanding their network of supporters worldwide, who can easily join in various online events and meetings without the constraint of distance. The Special Rapporteur also notes that, in some countries, systems in place for sanctioning violations of relevant legislation relating to social media are ineffective.

22. By the same token, the Special Rapporteur recognizes that the Internet and social media can be used for preventing the spread of racist ideologies by extremist political parties, groups and movements and notes with appreciation that the mainstream media in some countries have started to recognize the cultural value of diversity and to promote the idea of improving the living and working conditions of members of minorities. Other positive initiatives include the creation of social network-based platforms by civil society organizations at the national level targeting the youth with the specific aim of countering extremism, xenophobia and other forms of intolerance, in addition to promoting a democratic culture.

IV. Preventing and countering racism and extremism in sport²

23. According to reports received, extremist groups, including neo-Nazis and skinhead groups, operate at sporting venues, in particular football matches, and at some individual professional sporting events. The Special Rapporteur is concerned about an increase in reported cases of racist symbols and banners displayed during football matches, as well as the shouting of racist slogans and the making of racist gestures on those occasions. Those abuses are often targeted at foreign players, players or supporters of African descent, or at others because of their ethnic origin.

24. Given the important role that professional athletes play in inspiring the youth, those incidents are of particular concern. The Special Rapporteur reiterates the view expressed in his previous report (A/HRC/26/50), that there is no place for racism and intolerance in sport. Sport is meant to bring different cultures together in a celebration of healthy competition, and to overcome the social and political divisions that often divide countries and communities.

25. The Special Rapporteur is of the opinion that States, sports federations and other relevant authorities must address the problem of extremist groups, including neo-Nazis, skinhead groups and hooligans at sports events, including football matches. It is imperative

² See also the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the General Assembly (A/69/334).

that preventative measures be taken to avoid acts of racial violence, xenophobia, abuse and incitement to racial hatred by extremist individuals.

26. Nonetheless, the Special Rapporteur is encouraged by information received regarding measures taken by some States to counter racism and extremism in sports. One example is a conference organized by an Eastern European sports association in partnership with a local non-governmental organization, using the positive values of sports to counter racism and stereotyping.

27. Referring again to his previous report (A/HRC/26/50), the Special Rapporteur reiterates that States are bound by the obligations set forth in international human rights instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination. He recalls the requirements set out in Human Rights Council resolution 13/27, urging States and the relevant international and regional organizations to intensify the fight against racism in sport. He also encourages national and international sports organizations and federations to develop and implement codes of conduct that address the issue of extremist ideologies and intolerance among supporters, and urges States to seize the opportunity to use sporting events as a vehicle to promote respect for human rights, democracy and the rule of law.

V. Countering Holocaust denial and the distortion of history³

28. Holocaust denial is an attempt to negate the established facts of the Nazi genocide of European Jews, Roma, lesbian, gay, bisexual and transgender persons as well as political opponents. Some key denial assertions are that the murder of approximately 6 million Jews during the Second World War never occurred, that the Nazis had no official policy or intention to exterminate the Jews and that the concentration camps such as Auschwitz-Birkenau never existed nor served that purpose.

29. Holocaust denial and distortion are generally motivated by strong anti-Semitism, and build on the claim that the Holocaust was invented or exaggerated as part of a plot to advance Jewish interests. That is a view that perpetuates long-standing anti-Semitic prejudices and stereotypes and the Special Rapporteur recalls that the Holocaust is one of the tragic events of the past century that has been well documented. The Special Rapporteur is particularly concerned about allegations regarding a cartoon competition disdaining the Holocaust and insulting the victims and remaining survivors of that tragedy.

30. The Special Rapporteur reiterates his condemnation of attempts by extreme right-wing groups to deny the Holocaust and falsify history. Such revisions contribute to the rehabilitation and dissemination of Nazism and other extreme ideologies and create fertile ground for nationalist and neo-Nazi demonstrations. The Special Rapporteur is concerned about reports of university professors explicitly denying the existence of the Holocaust in a public academic setting in an Eastern European country, which received applause from the audience. The Special Rapporteur reminds all stakeholders that such events set dangerous precedents, do not promote values of tolerance and mutual understanding and run counter to provisions of several General Assembly and Human Rights Council resolutions on the matter.⁴

31. The Special Rapporteur recalls the importance of criminalizing the approval, denial or belittlement of the Holocaust in national law, especially considering that such a denial

³ The Special Rapporteur addressed the issue of Holocaust denial and the distortion of history in 2014, in his reports to the General Assembly (A/69/334) and the Human Rights Council (A/HRC/26/50).

⁴ See, for example, General Assembly resolutions 65/199, 66/143, 67/154 and 68/150.

could promote racist rhetoric and, as such, constitutes hate speech under article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination. He welcomes the fact that Holocaust denial is clearly considered a crime in a number of countries.

32. The Special Rapporteur continues to call for the active preservation of Holocaust sites that served as Nazi death camps, concentration and forced labour camps. He encourages States to take concrete measures, including legislative and educational ones, such as inclusion of education about the Holocaust in school curricula, so as to prevent revisionism of the Second World War, the denial of the Holocaust and the Nazi genocide and the glorification of Nazi criminals, which lead to the growth of neo-Nazi, xenophobic and anti-Semitic sentiments and serve to provoke inter-ethnic conflicts.

VI. Good practices in countering extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements

33. While not exhaustive, the examples of good practices presented below, as noted in the previous thematic reports of the Special Rapporteur (A/HRC/23/24 and A/HRC/26/50), have been developed to counter extremist political parties, movements and groups and provide an overview of some of the legislative, policy and institutional measures taken by States in different areas that could serve as models and be adapted to a local context. Such measures taken by States have also been complemented by initiatives developed by civil society organizations.

34. The Special Rapporteur notes with appreciation that a growing number of States have included prohibitions against racial discrimination and xenophobia in their domestic legislation. Furthermore, an increasing number of States have incorporated the International Convention on the Elimination of All Forms of Racial Discrimination into their domestic law, and have recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation by the State of any of the rights under article 14 of the Convention.

35. In addition, the Special Rapporteur welcomes the fact that a growing number of States, particularly in Eastern Europe, have either enacted specific laws, or introduced amendments to their Criminal Codes, with provisions on aggravating circumstances for offences committed on the grounds of persecution or hatred based on race, religion or nationality, or for the purposes of completely or partially annihilating a national, ethnic, racial or religious group or individual. In some countries, there are enhanced penalties for murder and causing bodily harm committed with racist or xenophobic motives and criminalization of organized violence at sporting events.

36. The Special Rapporteur notes that some countries have included provisions in their migration and refugee laws that reaffirm the principle of non-discrimination and require the relevant institutions in charge of issues relating to migrants and refugees to take all the necessary measures to prevent discrimination against those groups.

37. In some instances, the above-mentioned legislative developments have also been accompanied by the establishment of specific institutions such as national human rights institutions or ombudspersons, in accordance with the Paris Principles, to receive and consider complaints and investigate cases of racism, racial discrimination, xenophobia and related intolerance and/or communications referred to in the International Convention on the Elimination of All Forms of Racial Discrimination. In particular, the Special Rapporteur

welcomes the measures taken by a national commission on human rights in a Southern European country to combat racism in sports, including the appointment of a special prosecutor for crimes of racist violence. He also notes the creation in a Latin-American country of a monitoring mechanism for hate speech on the Internet, which aims to identify early racist crimes online and the eradication of any form of discrimination online, including the removal of discriminatory material from public web pages.

38. The Special Rapporteur welcomes the above-mentioned developments and recommends that such specialized institutions, in addition to monitoring and raising awareness about the challenges posed by extremist political parties, provide advice on measures to address them. States should ensure that such institutions have a strong mandate, independence and sufficient resources to execute their programmes.

39. In addition, the Special Rapporteur has received information regarding measures taken by some States regarding the training of their officials, in particular, law enforcement agents. In one Middle Eastern country, the Human Rights Commission organized workshops to raise human rights awareness among police officers, the judiciary and State officials. Legislation relating to the dissemination of a human rights culture in that same country was also adopted, which included the development of a national action plan. The Special Rapporteur notes with satisfaction that human rights education is of particular importance for a number of States and that specific units dealing with hate crimes and racism have been established, including within the Office of the Public Prosecutor.

40. The Special Rapporteur continues to appreciate the many examples of awareness-raising activities that have been conducted by States to foster tolerance and respect for cultural diversity, to combat racism, racial discrimination, xenophobia and related intolerance and to strengthen intercultural dialogue. Those activities include the organization of cultural events, art festivals of national minorities, exhibitions, concerts, seminars and forums in addition to the publication of books and brochures promoting cultural diversity. He encourages such initiatives, which offer space for further intercultural dialogue and interaction. Other measures are also welcomed, such as information broadcasts on television and the Internet aimed at promoting acceptance and tolerance among different ethnic groups. The Special Rapporteur welcomes the fact that, in some countries, the mainstream media have started to recognize the cultural value of diversity and to promote the idea of improving the living and working conditions of minority groups.

41. Finally, the Special Rapporteur emphasizes that continued cooperation with relevant international and regional human rights mechanisms and civil society organizations is important in countering extremist political parties, movements and groups, and he notes with appreciation the engagement of States with regional and international human rights mechanisms, including the Committee on the Elimination of Racial Discrimination, the special procedures of the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights.

VII. Conclusions and recommendations

42. **The recommendations the Special Rapporteur had made in his previous reports to the Human Rights Council (A/HRC/23/24 and A/HRC/26/50) and the General Assembly (A/69/334) remain valid and current. They are presented again below, clustered by thematic area for easy reference.**

Political measures

43. **The Special Rapporteur appreciates the efforts made by States to counter extremist political parties, movements and groups, including neo-Nazis, skinhead**

groups and similar extremist ideological movements. While good practices have been identified, important challenges remain, such as the rise in extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements, which continue to pose major human rights and democratic challenges. Greater vigilance from all States and relevant actors is therefore required. In that regard, the Special Rapporteur is of the view that a comprehensive approach based on a solid legal framework, complemented by other measures including key policy measures such as education and awareness-raising programmes, and a victim-centred approach, should be further developed and implemented. Good practices such as those mentioned in the present report should also be exchanged on a regular basis among all actors working in the field. To that end, the Special Rapporteur makes the following specific recommendations.

44. As long as extremist political parties, movements and groups continue to exist legally or illegally, they will remain a major challenge to democracy. In that regard, States should always bear in mind that preserving and consolidating the values of democracy are essential to preventing and combating racism, racial discrimination, xenophobia and related intolerance effectively. Political leaders and parties must therefore strongly condemn all messages disseminating ideas based on racial superiority or hatred, incitement to racial discrimination or xenophobia. They should be aware of the moral authority they bear, promote tolerance and respect, and refrain from forming coalitions with extremist parties of a racist or xenophobic character. Respect for human rights and freedoms, democracy and the rule of law should always be the cornerstone of all their programmes and activities, bearing in mind the need to ensure that political and legal systems reflect the multicultural character of their societies.

Legislative measures

45. As stated in paragraph 13 of the outcome document of the Durban Declaration and Programme of Action, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law, as should be the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts. In that regard, the Special Rapporteur calls upon all States to respect the commitments made in the Durban Declaration and Programme of Action, which is a comprehensive framework for action against racism, racial discrimination and xenophobia. He also recommends that States adopt legislation that conforms to international human rights standards, including the International Convention on the Elimination of All Forms of Racial Discrimination, paying particular attention to their obligations under article 4 of the Convention. In that connection, in order to prevent and address in an effective manner the commission of racist or xenophobic crimes by individuals and groups of individuals closely linked to extremist political parties, movements and groups, States should introduce into domestic criminal law a provision to the effect that the commission of an offence with racist, xenophobic, anti-Semitic or homophobic motivation or aim constitutes an aggravating circumstance attracting heavier sanctions.

46. The Special Rapporteur reiterates that States have the obligation to prosecute the perpetrators of crimes with racist, xenophobic, anti-Semitic or homophobic motivations and to fight against impunity. States should ensure prompt, thorough and impartial investigation into those crimes, and that those responsible are adequately sanctioned.

47. The Special Rapporteur urges States to ensure that victims of crimes motivated by racism or xenophobia have full access to effective legal remedies, including the right to seek reparation for damages suffered as a result of such crimes. He also recommends that States ensure that victims of racist or xenophobic crimes are provided with the necessary legal, medical and psychological assistance and are made aware of their rights and of existing judicial and non-judicial remedies. States should further engage with vulnerable groups or minorities who are at particular risk of racist or xenophobic crimes, with the aim of restoring confidence in law enforcement officials and the criminal justice system and to facilitate better reporting of such crimes.

Disaggregated data

48. The Special Rapporteur appreciates efforts made to document racially motivated crimes, and reiterates recommendations made in previous reports to the Human Rights Council and the General Assembly that States should collect disaggregated data and statistics on racist, xenophobic, anti-Semitic and homophobic crimes in order to identify the types of offences committed, the characteristics of the victims and of the perpetrators and whether they are affiliated with an extremist political party, movement or group. Such disaggregated data would provide a better understanding of the phenomenon and identify effective measures to be taken to address those crimes. States should provide adequate financial, human and technical resources to improve the quality of data collection systems where those already exist, while ensuring that civil society is involved in the process, which is to be undertaken in such a way as to guarantee the protection of privacy.

Education and capacity-building⁵

49. The Special Rapporteur recalls that education remains the most effective means of countering the negative influence that extremist political parties, movements and groups may have on young people. Recalling paragraph 136 of the Durban Programme of Action, he urges States to ensure that education and training, especially teacher training, promote respect for human rights and the fight against racism, racial discrimination, xenophobia and related intolerance, and that educational institutions implement policies and programmes on equal opportunities, anti-racism, gender equality and cultural, religious and other diversity, with the participation of teachers, parents and students.

50. In particular, the Special Rapporteur recalls paragraph 57 (a) of his 2013 thematic report (A/HRC/23/56), in which he recommended that States should recognize the important role of education in combating racism, racial discrimination, xenophobia and related intolerance, especially in promoting the principles of tolerance and respect to ethnic, religious and cultural diversity and preventing the proliferation of extremist racist and xenophobic movements and propaganda, especially among the youth.

51. He also recalls paragraph 57 (e) from the above-mentioned thematic report (A/HRC/23/56), in which he recommended that States should recognize the important role of formal and non-formal education in the deconstruction of prejudices, positive change of negative perceptions, enhanced understanding and social cohesion. To that end, States should be encouraged to implement educational activities and measures,

⁵ See also the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Human Rights Council (A/HRC/23/56).

including human rights training at various levels, to prevent and combat effectively racism, racial discrimination, xenophobia and related intolerance.

52. The Special Rapporteur also recommends that the capacity of law enforcement officials and members of the judiciary be strengthened further to address crimes motivated by racist, xenophobic, anti-Semitic or homophobic biases. Comprehensive and mandatory human rights training, including training with a specific focus on racist and xenophobic crimes perpetrated by individuals linked to extremist political parties, groups and movements, should be provided to public officials, including law enforcement agents, who should also be provided with the necessary guidelines and procedures to be able to identify, investigate and register such crimes. He emphasizes that States should also ensure that law enforcement agents engage with vulnerable groups who are particularly at risk of racist, xenophobic, anti-Semitic or homophobic crimes, in order to reduce their legitimate fears and concerns, restore confidence in the application of the rule of law, and that they report such crimes adequately.

53. The Special Rapporteur appreciates the organization of awareness-raising activities such as cultural events, festivals, conferences, seminars, competitions, exhibitions, research work and publications, as well as information campaigns and other events aimed at providing a space for intercultural dialogue and interaction, which contribute to the building of a society based on pluralism, tolerance, respect for cultural diversity, multiculturalism and non-discrimination and which should be further encouraged.

Internet and social media

54. The Special Rapporteur notes with concern the increased use of the Internet and social media by extremist political parties, movements and groups to promote and disseminate racist content. States should take all opportunities, including those provided by the Internet, to counter the dissemination of ideas based on racial superiority or hatred, and promote the values of equality, non-discrimination, diversity and democracy, while respecting their obligations under articles 19 and 20 of the International Covenant on Civil and Political Rights. In order to ensure full respect for human rights and democratic principles, States, while adopting measures to counter extremist ideas and biases, should strengthen freedom of expression, which plays a crucial role in promoting democracy and combating racist and xenophobic ideologies based on racial superiority.

Sport

55. The Special Rapporteur calls on States to strengthen measures to prevent racist and xenophobic incidents at sporting events. He notes the key role of sport in promoting cultural diversity, tolerance and harmony and recommends that States take advantage of such events to promote the values of tolerance and respect. He recalls paragraph 218 of the Durban Programme of Action, which urges States, in cooperation with intergovernmental organizations, the International Olympic Committee and international and regional sports federations, to intensify the fight against racism in sport by educating the youth of the world through sport practised without discrimination of any kind and in the Olympic spirit, which requires human understanding, tolerance, fair play and solidarity.

Holocaust denial

56. The Special Rapporteur condemns any denial or attempt to deny the Holocaust and all manifestations of religious intolerance, incitement, harassment or violence against persons or communities based on ethnic origin or religious belief. He also calls

for the active preservation of the sites which served as Nazi death camps, concentration and forced labour camps and prisons, and encourages States to take legislative and educational measures to put an end to Holocaust denial.

Civil society

57. The Special Rapporteur recalls the importance of cooperating closely with civil society and international and regional human rights mechanisms to effectively counter extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements. In particular, the role played by civil society in collecting information, working closely with victims and promoting democratic principles and human rights should be emphasized. He calls upon national human rights institutions to develop appropriate programmes to promote tolerance of and respect for all and to collect relevant information.

Good practices

58. Efforts made by States to counter extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements should be enhanced through the replication of good practices. In that connection, it is important that the sharing of good practices continue among all relevant stakeholders. The Special Rapporteur recalls the importance of cooperating closely with civil society and international and regional human rights mechanisms to effectively counter extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements. As stated in paragraph 49 of the outcome document of the Durban Review Conference, a broad sharing of best practices in all regions of the world aimed at preventing, combating and eradicating racism, racial discrimination, xenophobia and related intolerance can assist Governments, parliaments, the judiciary and civil society with the effective implementation of the provisions of the Durban Declaration and Programme of Action, and the Rabat Plan of Action.

59. The Special Rapporteur urges all States to submit information regarding measures undertaken within their respective territories in relation to the provisions set out in General Assembly resolution 69/160 on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance.